

# POLICE LAW

## PART I. LEGAL PRINCIPLES, PROCEDURE AND EVIDENCE

### Chapter I

#### CRIME

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Law. A law is defined by the great lawyer Blackstone as a rule of action prescribed or dictated by some superior which an inferior is bound to obey. It also has been defined as a rule of action to which men are bound to make their conduct conform.

The word "law" implies obedience. When the laws of nature, of a country, of sport are referred to, it means those rules which people, citizens, sportsmen should obey.

The word law also implies penalty or sanction namely, that if a law is broken some punishment ought to fall on the breaker, so as to prevent a repetition of the breach and to deter others from doing likewise.

The law of a country means the rules of conduct under which the people of that country live, and without which no person could hope to live peaceably and in safety as regards himself and his belongings. These rules either have gradually come into existence by the general agreement of the people or have been

Obedience to law must be enforced and the duty of enforcing the laws is assigned to the police, who are responsible to the State and to the people for the proper performance of their duty.

M.V.L.

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The law of England is composed of two kinds of laws, viz. :

(1) The Common Law, which is made up of those general customs which have been regarded as laws in the land from time immemorial. By general agreement endorsed by the practice of the Courts certain rules of conduct have by custom become laws and these laws are known as the Common Law. Breaches of these laws are termed common law offences for example : affray, compounding a felony, conspiracy.

It is now much easier and speedier to create laws by written statute or order of the ruling authority, but it is still possible to deal with an act tending to the prejudice of the community, not especially provided for by the law, by bringing the offender before a judge and jury, who, by convicting him, will thus create another common law offence.

For example, see " Public Mischief," Chap. 21.

(2) The Statute Law which includes all the laws made by direct order of the State and set out in Acts of Parliament or Statutes, which are ordinances made by the supreme power in this country, which is Parliament, consisting of the Sovereign, the House of Lords, and the House of Commons.

Such a law, in the form of a Bill, is usually proposed in the

amended, and if then approved it has to pass in the same manner through the House of Lords before it is presented to the Sovereign for assent.

Statute or Act of Parliament, and is known by a short name or title indicating its purport, and it may also be referred to by its

during whose reign it was passed.

prevention of cruelty to children and other matters is known as the Children and Young Persons Act, 1933. and as 23 Geo. 5, c. 12. Usually several Statutes are enacted during each year of a Sovereign's reign, so they are numbered in the order of their passing as chapters in the complete law made during

sections to facilitate reference to the particular points dealt with.

Thus 23 Geo. 5, c. 12, *a. 7*, means the 7th section of the 12th Act of Parliament passed in the 23rd year of the reign of King George the Fifth viz. 1933. However, by the Acts of Parliament Numbering and Citation Act, 1962, the chapter numbers of Acts of Parliament passed in 1963 and after will be assigned by reference to the *calendar* year in which they are passed, as opposed to the *regnal* year (or year of the sovereign's reign) mentioned above. Thus the first Act to receive the Royal Assent after January 1, 1963, may be cited as " 1963, c. 1 ". Statutes may empower the making of Regulations or Statutory

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### 4. The Quarter Sessions, or Sessions proper. These Courts

(1) The General County Sessions of the Peace, held at least four times a year in every county. It consists of not more than nine Justices presided over by a Chairman, and with a jury it may deal with indictable offences, except certain serious ones such as treason, murder, libel, incest (for list see Archbold), which must be tried at Assizes. However, certain serious offences as given in s. 2 of the Administration of Justice (Miscellaneous Provisions) Act, 1938 and in the 2nd schedule of the C.J.A. Act, 1962 may be tried at Quarter Sessions. It may also deal with appeals against summary convictions.

See

"Appeal," Chap. 5.

(2) The Borough Quarter Sessions, held at least four times a year in many cities and towns. The Judge is called the Recorder, and with a jury he can try all criminal cases except

appeals from magistrates' courts.

5. A Magistrates' Court. The M.C. Act, 1952 (supplemented by the Magistrates' Courts Rules, 1952-1961) defines a "magistrates' court" as meaning any justice or justices of the peace acting under any enactment (including public and local Acts and orders and regulations made under them (s. 126)) or by virtue of their commission or under the common law (s. 124).

The Justices of the Peace Act, 1949, s. 44, also defines a "magistrates' court" as a court of summary jurisdiction or examining justices and includes a single examining justice.

Such a court acts in a petty sessional court-house for a petty sessions area of a county and if the area is not a borough the justices may appoint another place (or places) as an occasional court-house (M.C. Act, 1952, s. 123).

At least two justices are necessary in a magistrates' court to try an information summarily or hear a complaint unless a single justice is allowed to do so by law in any particular case (M.C. Act, 1952, s. 98).

A magistrates' court to try summarily an indictable offence or try a non-indictable offence and impose imprisonment when sitting in an occasional court-house or a petty sessional court-house (s. 98).

Such courts are open to the public unless otherwise provided by law (s. 98). A court of a single justice or a court sitting in an

ment or 20 shillings fine (s. 98).

One justice sitting alone may deal with simple drunkenness (C.J.A. Act, 1914, s.38, and any other offences definitely so allowed by some statutes.

A magistrates' court (which for conciseness is herein termed a summary court and it is a court of summary jurisdiction) can deal

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"Statutory Instruments Act, 1946") which also have the force of law.

have been dealt with by Act of Parliament; hence an offence may be both a common law offence and a statutory offence : for example, forgery is a misdemeanour at common law, and may be

Crime. Stephen's Criminal Law defines a crime as an act of disobedience of the law forbidden under pain of punishment. Punishment in this criminal sense may be death or loss of liberty or (and) money penalty. There is however another kind of disobedience of law called a "civil injury," which is a wrongful act injuring some person or persons but which does not disturb the community in general. Eminent lawyers have framed definitions of the word "crime," designed to show the difference between a crime and a civil injury, but the difficulty is that both are breaches of law, and for some wrongful acts (such as assault) both civil and criminal remedies are available.

munity at large, while the effect of a civil injury is usually restricted to the injured person or persons. The criminal law is intended to secure public peace and order. The object of criminal

warning to persons in general not to commit crime, but in civil proceedings the persons whose rights have been interfered with take action to obtain for themselves compensation or damages.

The practical test as to whether a particular act is a crime

conduct punishable by the criminal law is a crime.

A crime consists of some wrongful act or conduct together with some guilty or blameable condition of mind. The criminal law does not punish illegal thoughts ; it waits until an unlawful thought is evidenced by some action or by neglect to take action. If an act, which by law should have been done, is not done, it is called an omission.

The guilty or blameable state of mind which is necessary to

When a person of his own free will does an act he is said to do it wilfully If an act is not freely willed by the doer, it is said to be involuntary.

Malice is the evil intent beforehand to do harm, intent being the person's intention or purpose. The word "maliciously" in a

*Cunningham* (1957) it was laid down that "in any statutory definition of crime, malice must be taken not in the old vague sense of wickedness in general but as requiring either (1) an actual intention to do the particular kind of harm that in fact

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was done; or (2) recklessness as to whether such harm should occur or not (i.e. the accused has foreseen that the particular kind of harm might be done and yet has gone on to take the risk of it). It is neither limited to nor does it indeed require any ill will towards the person injured. Malice is of two kinds, viz.:

(1) Express malice, which is actual ill-will or intent to do harm to someone.

(2) Implied malice, which is the malice the law regards as existing when a wrongful act is done voluntarily and without excuse. The law presumes that a person intends the natural consequences of his acts, and if harmful consequences result from an act the law considers that the doer intended harm.

Act, 1957, which abolished "constructive malice". But the doctrine of malice aforethought constituted by a proved intent to do grievous bodily harm has not been abolished or affected by this section (*D.P.P. v. Smith* (1960)).

As a general rule the law regards the criminal act itself as to prove that he had no malice in his mind. However, in many

many acts can be regarded as criminal, when it lays down that such acts must have been done "maliciously," "knowingly," "fraudulently," "feloniously," or with some particular "intent." In such cases the prosecution has to prove by evidence that the accused was actuated by such a condition of mind.

Also in many offences the law definitely states that the mere doing of a certain act is an offence, even if the doer can prove he was not influenced by malice for example, dangerous driving.

In certain offences the law directs that a person is responsible for certain acts done by his servants without his knowledge and even against his orders for example, sale of drink to a drunken person. In these particular cases the law throws on the persons concerned the responsibility of taking effective care to prevent their\* commission.

**Motive.** The motive for a crime is the condition of mind which leads the criminal to commit the crime : his reason for his conduct. "Motive" is not intention, for a person's intention is connected with the results or consequences of the act he intends to do. Thus a man may intend to go to an inn. his motive being to get a drink. In robbery the motive is usually need of money, and the intention will be to take money from the attacked person.

Motive, from the police point of view, is of the greatest importance. If the motive of a criminal be known, it will throw much light on the case and materially assist in the elucidation of the facts.

**Crime and Offence.** The word "crime" is applied generally to any illegal act or conduct which entail\* criminal punishment, but

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it is usually applied in a narrower sense to an act which is punishable on indictment that is, on a written charge put before a judge and jury, and therefore called indictable. See "Indictment," Chap. 5. The word "offence" also means an illegal action and, in a broad sense, may be applied to any illegal act or conduct which entails criminal punishment, but it usually refers to an act which is punishable on summary conviction by the magistrates.

The expression "criminal offence" is sometimes used and has the same meaning as "crime" or "offence," that is any illegal act or omission liable by law to punishment such as imprisonment or fine.

Thus "crimes" usually mean indictable offences or the more serious illegal and punishable acts, and "offences" usually indicate those minor illegal acts which are punishable by the magistrates in their courts.

For the purpose of dealing with persons who will not cease their criminal activities the expression "crime" is given a particular meaning in the Prevention of Crimes Act, 1871. See "Special Offenders," Chap. 28.

For the purposes of the Magistrates' Courts Act, 1952, the Act gives special meanings to "summary offences" and "indictable offences" (s. 125). See "A Magistrates' Court", Chap. 4.

**Classification of Crime.** Crimes may be arranged in two groups, viz :

(1) Indictable Offences, which are the more serious breaches of the criminal law and for which an indictment lies which is a charge triable by a judge and jury.

(2) Summary Offences, which are less serious and are triable by justices without a jury and are termed non-indictable.

However, this arrangement is merely a general classification. Many indictable offences may now, by Statute, be dealt with by justices without a jury. For instance the Magistrates' Courts Act, 1952, s. 19 allows a court of justices to deal summarily with a person of 17 or upwards for any of the indictable offences mentioned in the First Schedule to the Act if he consents to such a trial. A person accused of an indictable offence must be present at his trial.

Also under s. 25 of the same Act, a person aged 14 years or more charged before a summary court with a summary offence (which is not assault or offences under ss. 30, 31, 32 of the Sexual Offences Act, 1956) for which he is liable on conviction to imprisonment for more than 3 months, has the right, if present in person, to claim trial by jury, and should be told so before the charge is gone into. See "Progress of a Case," Chap. 4.

If the law declares a particular offence to be punishable on conviction on indictment or on summary conviction, the offence should be regarded as an indictable offence. (See *R. v. Fussell* (1951)).

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regarded as indictable. (See *Hastings and Folkestone Glass - works, Ltd. v. Kalsan* (1948)).

The Director of Public Prosecutions should be informed of every prosecution of an indictable offence and of a summary offence which has been wholly withdrawn or was not proceeded with within a reasonable time. (See Appendix III.)

misdemeanours. Formerly certain illegal acts were singled out by the Common Law as so serious that persons convicted of perty. These serious crimes were called felonies, and the term

Felony therefore means a serious crime for which the law prescribes punishment such as death, imprisonment, fine, &c., and which it calls a felony for example, treason, murder, manslaughter, rape, arson, burglary, sacrilege, robbery, larceny, bigamy. Unless the sentence is fixed by law, an offender convicted on indictment of felony, may be fined instead of or in addition to any other penalty (Criminal Justice Act, 1948, s. 13).

The term misdemeanour, meaning wrongdoing, is specially enough to be tried by a judge and jury but not declared by law perjury, conspiracy, concealment of birth, blasphemy, libel, sedition, unlawful assembly, incest. However, any breach of the criminal law which is not a felony is a misdemeanour, but it is not usual to describe the minor summary offences as misdemeanours.

breaches of the law which may be dealt with summarily by magistrates without a jury. They have been created by Statutes which give the magistrates power to deal with them.

Crimes or breaches of the criminal law may therefore be classified as :

1. Felonies, indicated by the letter F.
2. Misdemeanours, shown by the letter M.
- 3.

whether any particular breach of the law is felony, misdemeanour,

depend on the classification of the crime. In every case of felony he has power to arrest without a warrant or order from a magistrate. He has no power to arrest without warrant in a case of

presence, or unless some Statute has specially given him the power to arrest without warrant for that particular misdemeanour.

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warrant, unless the Statute which has created the offence has expressly given him such power of arrest. See "Arrest," Chap. 3.

Punishment for crime. In early days such punishments included death by various painful methods, torture, loss of pro-penalties fell into disuse, and now the Criminal Justice Act, 1948, in a particular division of the prison (s. 1) and whipping by sentence of a court (s. 2). Convict prisons have ceased to exist.

death on conviction of treason, piracy with violence, arson of H.M. ships etc. and capital murder (with two exceptions as given in Chapter IX under "Legal Consequences of homicide and kindred offences").

but not on an offender under 18 (not under 17 by a summary court, M. C. Act, 1952, s. 107) and on an offender under 21 only where no

imprisonment on a first offender of or over the age of 21, unless the court is of opinion that no other method of dealing with him is appropriate (First Offenders Act, 1958, s. 1). Imprisonment in

imposed on persistent offenders (C.J. Act, 1948, s. 21). Instead of imprisonment an offender who is suffering from mental illness,

be sent to a hospital or placed under guardianship. (Mental Health Act, 1959, s. 60).

There is no limit to the imprisonment which can be inflicted for a common law misdemeanour (*R. v. Morris* (1950)).

The Criminal Justice Act, 1948, has also prescribed several kinds

in detention centres (s. 18), attendance centres (ss. 19, 48), remand centres (s. 27) and Borstal institutions (s. 20). The Children and Young Persons Act, 1933, established remand homes (ss. 77, 78), approved schools (ss. 79, 80, 81) and allowed youthful offenders to be entrusted to the care of fit persons (ss. 75, 85),

special reception centres for the temporary reception of children under 12 in custody.

Fines can be imposed for many offences and for felony instead of or in addition to any other penalty (C.J. Act, 1948, s. 13).

Binding over to keep the peace and (or) to be of good behaviour

Under the Criminal Justice Act, 1948, a convicted offender may be put on probation with additional requirements (s. 3), or he may



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**be discharged either absolutely or conditionally that he commits no offence during a period (s. 7).**

See also "Penalties," Chap. 28.

**Excuses for Crime.** The law presumes that every person is sane and accountable for his actions, but it is open to an offender, when charged with an offence, to prove that he is not responsible in law for his illegal act because he had no intention or wish to do wrong, or to prove that he was justified in doing what he did.

(1) **Insanity.** The accused may be an idiot or totally deranged in his mind or insane on some subject or subjects, and his insanity may be permanent or temporary. A person of unsound mind may be arrested and charged with an offence; evidence may be given to prove he is insane and the decision rests with the court.

(2) **Drunkenness** as a rule is not an excuse for crime, except when it is involuntary—that is, contrived deliberately by other persons.

A person in a state of intoxication is *prima facie* liable for his

In a case where a particular intent is essential to make his conduct a crime, if he can prove that owing to his condition he had no such criminal intent, he may be acquitted.

If fraudulently made drunk by another an offender would not be accountable for his actions while under that influence.

(3) **Ignorance or mistake.** Ignorance of the law will not justify any breach of the law, even when committed by a foreigner. Aliens in our country are subject to our laws.

An honest and reasonable mistake of fact may excuse a crime if the intention of the person committing the crime was not unlawful. However, the excuse of ignorance or mistake will not be of avail in the case of acts forbidden absolutely by law for instance, the sale of intoxicants to a drunken person.

**(4) Accident may be an excuse for an offence committed in the performance of a lawful act which is being done with**

(5) **Compulsion.** This excuse is also known as coercion or duress and would probably hold good in the case of a person compelled by direct physical compulsion to commit an offence. The compulsion of necessity will not justify the commission of a crime. Even threats to property or of future injury to the person will not excuse crime.

(6) **Married women.** The Common Law presumed that a crime, other than murder, committed by a wife in the presence of her husband, was committed under his coercion and therefore excused her from punishment. However, this presumption was abolished by the Criminal Justice Act, 1925, s. 47.

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which also directs that when a wife is charged with any offence except treason or murder, it shall be a good defence if she can prove that the offence was committed in the presence

Husband and wife may not alone be found guilty of conspiracy, being for some purposes considered in law as one person and therefore as having but one will.

(7) Justification. An act which ordinarily would be criminal may be authorised by law, as in the case of justifiable homicide, in which no guilt or fault attaches to the slayer, in his act.

An assault may be justified as committed in defence of person or property, or as committed in the process of reasonably correcting a child or scholar. Justification may be advanced as a defence in any prosecution, but its effect will depend on the facts of the case.

Exemptions from Liability for Crime. The following are more or less exempt from punishment for offences which they may commit :

(1) The Sovereign, The maxim is that the Sovereign can do no wrong, and the Sovereign is beyond the reach of the law.

(3) Foreign Sovereigns and Ambassadors from foreign countries, while resident in this country, do not come under the jurisdiction of the English Courts. If they commit offences they may be requested by the State to leave the country. Diplomatic privileges have been extended to staffs and representatives of members of certain international organisations (as, for example, the United Nations) and to Commonwealth

tions (Immunities and Privileges) Act, 1950, and the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act, 1952.

(3) A Corporation or Company composed of several persons obviously cannot be dealt with for crime as a human person, as it cannot be hanged or imprisoned ; but it can be prosecuted, as a Corporation, for all offences which may be punished by a fine.

Magistrates' Court Act, 1952, s. 36 and 2nd Sched. gives the procedure to be followed in the prosecution of a corporation for an indictable offence. If a crime is committed by the order of a corporation those concerned may be prosecuted individually

(4) Infants under the age of eight years are not punishable for any offence, as the law holds that under that age no

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with any offence, but if needing care or protection such a child may be taken to a place of safety and brought before a Court. See Chap. 12.

*Children between the ages of eight and fourteen years* are regarded as so wanting in discretion that they must not be punished for an offence unless it is proved that they knew quite well that they were doing wrong.

Offenders between 2<sup>1</sup>/<sub>2</sub> At and fourteen may therefore be arrested and tried for an offence, but may not be found guilty unless there is clear proof of their guilty knowledge.

A boy under fourteen years cannot commit rape or any

*Persons of fourteen years and upwards* are considered to be of sufficient discretion to be liable for their illegal acts.

Offenders, therefore, of and above fourteen years of age may be arrested, tried, and found guilty of any offence against the criminal law.

**Remission of Penalty.**—The Crown has the right to remit punishment, by granting a pardon either with or without conditions, or by commuting the sentence.

By the Remission of Penalties Act, 1859, the Crown may remit in whole or in part any sum of money which under any Act may be imposed as a penalty or forfeiture on a convicted offender, although such money may be in whole or in part payable to some party other than the Crown.

The Sovereign may extend the Royal mercy to any person who may be imprisoned for non-payment of any sum of money so imposed, although it may be in whole or in part payable to some party other than the Crown.

Prison Act, 1952, s. 25. allows remission of part of a sentence of imprisonment on the ground of industry and good conduct, and vision a prisoner who was under the age of 21 at the commencement of his sentence.

S. 2fi allows the release on licence with or without supervision of persons sentenced to corrective training or preventive detention.

S. 27 allows the Secretary of State to release on licence with conditions a person serving a sentence of imprisonment for life, and he may recall him to prison. See "Release on Licence and Supervision," Chap. 28.

## Chapter II CRIMINALS

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**Criminals.** Strictly speaking a person who has committed a crime is a criminal, but the term is usually confined to a person who has been convicted of a crime. Although he may not have caused the commission of the intended crime, a person **who** incites another, conspires with another, or himself attempts to commit a crime is a criminal. Such intended crimes are called inchoate crimes to indicate e.g. in the case of an attempt that the intended crime has been begun but has not been completed. A person may also become a criminal by being unlawfully connected with a crime that has already been committed.

**Incitement to Crime.** The inciting or urging some other person to commit a crime is a misdemeanour at common law. The offence is committed even though the other person does not commit the suggested crime.

Incitement to Mutiny Act, 1797, s. 1. It is a felony to incite any member of Her Majesty's Forces on sea or land to mutiny. See also "Sedition," Chap. 20, and "Incitement to Disaffection," Chap. 30.

Official Secrets Act, 1920, s. 7. It is felony, misdemeanour or a summary offence to incite another to commit any felony, misdemeanour, or summary offence against the Official Secrets Acts.

Offences against the Person Act, 1861, s. 4. Incitement to murder any other person is a misdemeanour.

Incitement of a woman to cause her own miscarriage would be felony under s. 58 of this Act.

Post Office Act, 1953, s. 68. It is a misdemeanour to incite any person to commit any offence indictable under this Act.

Betting and Loans (Infants) Act, 1892. Sending circulars, etc., inciting infants to bet or to borrow money is a misdemeanour. See "Advertising Betting," Chap. 36, and "Money-landers," Chap. 31.

Accessories and Abettors Act, 1881, s. 2, provides that \* person advising another to commit a felony may be dealt with as an accessory before the fact to the felony

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An attempt to incite to the commission of a crime is a misdemeanour, and a conspiracy to incite a person to commit crime is also a misdemeanour.

When the incitement has caused the commission of the offence, the inciter is liable as an accessory before the fact in felony, and as a principal in misdemeanour and summary offence.

Magistrates' Courts Act, 1952. s. 19. permits that an adult (17 or over) if he consents may be dealt with summarily for any offence of inciting to commit a summary offence (and under s. 19 (8) the penalty cannot be greater than what is allowable for the summary offence) and for the offence of inciting to commit any indictable offence which may be dealt with summarily as given in the First Schedule to the Act.

**Attempt to Commit Crime.** An attempt to commit a crime is any act done with intent to commit that crime and forming part of a series of acts which if not interrupted would result in the actual commission of the crime. An intention to commit an offence is not sufficient, as criminal liability does not commence

crime. Preparation for an intended crime will not amount to an "attempt"; for example, buying a box of matches will not be "attempted arson".

The intent must be shown by some overt or open act con-

A person indicted for a felony or misdemeanour may be convicted of the attempt to commit that crime, if the jury is satisfied that he attempted to commit but did not complete the Crime (Criminal Procedure Act, 1851, 8. 9).

An attempt to commit a felony or a misdemeanour is a misdemeanour if the felony is a misdemeanour or if the misdemeanour is a felony.

S. 15. Attempt to commit murder. See also ss. 11 to 14. S. 18. Attempt to discharge loaded arms at any person with intent to maim or do some other grievous bodily harm or to prevent the arrest of any person.

Ss. 21, 22. Attempt to choke, stupefy, etc., with intent to commit any indictable offence. S. 29. Attempt to injure persons by explosive or corrosive

substances. S. 30. Attempt to do bodily injury to any person by placing

explosives near buildings or ships. Malicious Damage Act, 1861.

S. 10. Attempt to blow up dwelling-houses, etc.

Larceny Act, 1916. S. 73. Attempt to rob. accompanied by assault.

Under the Magistrates' Courts Act, 1952, s. 19 and First Sched. any attempt by an adult to commit any indictable offence which may be dealt with summarily, may be dealt with summarily with the consent of the accused. This applies to an attempt to commit any offence which may be dealt with on indictment or summarily as such an offence is an indictable offence, and under s. 19 (9) of the Act a summary conviction for this last offence shall not entail any greater penalty than what summary conviction of the completed offence would have entailed.

**Accomplice.** When two or more persons are concerned in the commission of an offence, each one is an accomplice of the other or others. An accomplice may give evidence on behalf of the prosecution, or, as it is sometimes called, give "Queen's Evidence," against his partners in the offence. Such evidence is usually given in the hope of escaping punishment and should be accepted with great caution. Naturally an accomplice will be able to give the facts of the crime, but his evidence will require corroboration (see "Corroborative Evidence," Chap. 7).

In practice a prisoner ought not to be convicted on the sole evidence of an accomplice, as other independent evidence implicating the prisoner will be required before the Court is satisfied (*R. v. Baskerville*. (1916)).

If an "accomplice" witness refuses to give evidence, it will be for the Court to decide whether the witness is in peril of prosecution (see "Privilege," Chap. 7), and whether he should or should not give evidence.

**Accessories to a Crime.** There are four ways in which a person can be concerned in a felony.

(1) Principal in the first degree, who is the actual offender, and who in most cases has actually committed the felony with his own hands. There may be several principals in the first degree in a felony.

(2) Principal in the second degree, who helps the actual offender at the very time at which the felony is committed. He may be present at the commission of the felony (as in most cases), or he may be near at hand, watching or helping on in some way the commission of the felony.

(3) Accessory before the fact, who procures, advises, or aids another to commit a felony, but is not present at the time the felony is committed. If he were present, he would be a principal.

(4) Accessory after the fact, who, knowing a felony has been committed, receives, relieves, comforts or assists the felon in such a way as might assist him to escape from justice (*R. v. Rose* (1962)).

Some active assistance to the felon is necessary; mere knowledge that the person has committed a felony and allowing

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him to escape will not make an accessory. (Such inaction constitutes the misdemeanour of misprision <>1 iel< ny.)

A wife who assists her husband, knowing that he has committed a felony may not be an accessory after the fact. See C.J. Act, 1925, s. 47, under which a wife so accused may prove coercion by her husband. This is the only relationship that will excuse the act of assisting a felon, as a husband would be

There are no "accessories" in treasons, misdemeanours, and summary offences, as all concerned are treated as principals.

The Accessories and Abettors Act, 1861, directs that an accessory before the fact may be indicted and punished as if he were the principal felon. It declares that an accessory to felony, either before the fact or after the fact, is guilty of felony and may be tried either with the principal felon or after his conviction, or for felony although the principal felon is not in custody or amenable to justice. It reaffirms the Common Law that any person who aids, abets, counsels, or procures the commission of any misdemeanour is liable to be punished as a principal.

The Magistrates' Courts Act, 1952, s. 35, enacts that a person who aids, abets, counsels or procures the commission by another

may be tried (whether or not he is charged as a principal) either by a court having jurisdiction to try that other person or by a Court having by virtue of his own offence jurisdiction to try him. The words "aid, abet, counsel, or procure" may be used to

convicted even if the principal is acquitted. It should be proved that the aider knew the facts of the offence committed (*Thomas*

MC. Act, 1952, s. 19, and 1st Sched., allows an adult if he consents, to be dealt with summarily for aiding, abetting, counselling, or procuring the commission of any indictable offence which may be dealt with summarily. There is no provision in law for the Summary Trial of an accessory after the fact.

**Compounding Offences.** The compounding of an offence is the agreeing not to prosecute the offender. The general principle is that any agreement to compound a criminal offence is not legal as a criminal prosecution is a proceeding for the benefit, not of an individual, but of the public, and the public have an interest in every guilty person being brought to justice.

Whether the compounding of any particular offence is an offence in itself or not depends on the nature of that particular

**Compounding a Felony.** It is a misdemeanour at common law for a person, for any reward or advantage, to agree not to prosecute any person for felony. The taking back of stolen goods

is no offence, but it is an offence to receive back stolen goods or some other amends on condition of not prosecuting.

Compounding a Misdemeanour. Any agreement not to prosecute a misdemeanour is not legal, but such an agreement

to a conspiracy to defeat the ends of justice, which is a misdemeanour at common law.

Larceny Act, 1916, s. 34. It is a felony for any person to corruptly take any reward under pretence or upon account of helping any person to recover stolen property, unless he has used due diligence to cause the offender to be brought to trial.

Larceny Act, 1916, s. 5 (3). It is a misdemeanour for any person to corruptly take any reward under pretence or upon account of aiding any person to recover any stolen dog. See "Stealing Dogs," Chap. 35.

Larceny Act, 1861, s. 102. Any person who advertises a reward for the return of stolen or lost property, and in such advertisement uses words to the effect that "no questions will be asked" or no inquiry made, or that money lent or paid for such property will be repaid, is liable to summary conviction and fine. Under the Larceny Advertisements Act, 1870, no such action may be taken against the printer or publisher of a newspaper unless within six months of the publication and with the consent of the Attorney-General or Solicitor-General.

Misprision of Felony. A person who knows that a felony has been committed and does not disclose it, although not in any way a party to it, commits the misdemeanour of misprision of felony. In *Sykes v. D.P.P.* (1961) it was held that this crime was not obsolete, and that active concealment was not an essential ingredient of the offence. There is no similar crime in omitting to disclose a misdemeanour.

Extradition. Extradition is the process by which a person who has committed a crime in this country and has fled abroad, or vice versa, is arrested and taken for trial to the country in which he had committed the crime.

The procedure as regards extradition to and from foreign countries is governed by the Extradition Acts and by the treaties in force with foreign countries, and extradition is possible only in the case of a person charged with any of the crimes mentioned in the treaty concerned.

The surrender of fugitive offenders to and from British Possessions is dealt with by the Fugitive Offenders Acts, 1881 and 1915, which also extend to cases affecting British subjects in certain foreign countries wherein British consular jurisdiction exists, and which cover all offences punishable in the place where committed by imprisonment with hard labour for twelve months or any greater punishment.



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Cases under these Acts must be reported to the Director of Public Prosecutions (see Appendix III).

See Chap. XI on Extradition in Moriarty's Police Procedure and Administration.

employed under H.M. Government in the United Kingdom in the service of the Crown who commits, in a foreign country, in the course of his employment, any offence which would be indictable if committed in England, may be dealt with in any place in England in which he is arrested or in custody.

**Convicted Persons.** When a person is convicted of a crime or summary offence a record of the conviction is made by the Court which has convicted him.

Evidence Act, 1851, s. 13, allows the production in evidence, in any proceedings whatever, of a copy of the record of the trial and conviction, or acquittal, of a person charged with an indictable offence, provided it is certified by the officer having custody of the records of the Court of trial.

A previous conviction may be proved by producing a record or extract of such conviction signed by the Clerk of the Court of conviction, and giving proof of the identity of the person with the person shown by the extract to have been convicted (Prevention of Crimes Act, 1871, s. 18). The accused person should be present to be identified.

A summary conviction may be proved by producing a copy of the minute or memorandum of the conviction entered in the Court register, purporting to be signed by the Clerk of the Court by whom the register is kept, and by proving the identity of the person (Criminal Justice Administration Act, 1914, s. 28 (1)).

In any criminal proceedings a previous conviction may be proved against any person by finger-prints. A certificate from the Metropolitan Police that finger-prints are those of a person previously convicted, giving the conviction, with a certificate from the prison or remand centre in which the person was detained, that finger-prints are those of this person, together with a certificate from the Metropolitan Police that both these sets of

If a person admits the previous conviction, evidence of identity will not be necessary, but as a rule it is advisable to produce the record of the conviction.

An offender shall not be liable to be punished twice for the same offence (Interpretation Act, 1889, s. 33). If again charged with the identical offence or on the same acts or omissions on which he was previously convicted, he can effectively plead "Autrefois Convict."

Outstanding charges (previous offences not detected) which an

should be taken into consideration before sentence, may be taken into consideration by the court, but any such previous offence

However, where a person is convicted of an offence and other offences of his are taken into consideration before sentence, such taking into consideration does not amount to conviction on them (*R. v. Need* (1949)).

When the Court announces conviction there is a conviction even if no sentence is pronounced and the case cannot be re-tried. (*R. v. Sheridan* (1937) and *R. v. Campbell, ex parte Hoy* (1953)).

Apparently a magistrates' court has no power to alter its sentence once it is pronounced unless it does so at the same sitting of the court.

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ARREST is the taking or apprehending of a person and restraining him from his liberty. Arrest in a criminal sense is the appre-

The person making an arrest should give to his prisoner the reason for the arrest at the time of the arrest, though in law this requirement does not exist if the circumstances are such that the person arrested must know the general nature of the alleged offence for which he is detained (*Christie v. Leachinsky* (1947)). In this case the House of Lords on final appeal in 1947 declared that when a police officer arrests without warrant on reasonable suspicion he must normally inform his prisoner of the true ground of arrest. Precise or technical language need not be used but the prisoner should be told in substance the reason why he

false imprisonment unless the prisoner has made it impossible to SO inform him by running away or assaulting the officer, or unless the circumstances of the crime are so apparent that the prisoner must know the nature of the crime for which he is detained.

On arrest there is a right to search the prisoner for any article -  
sion or control of a person arrested is excused if later they are  
(1934)).

An arrest may be either without or with a warrant or written authority (see " Warrants," Chap. 5). Every police officer has certain powers of arrest either without warrant or with warrant.

1. Arrest without Warrant at Common Law. A constable's power of arrest without warrant under the Common Law may be classified according to the evidence available of the, offence.

(1) On his own view. A constable may and should arrest any person whom he sees committing any treason or felony or inflicting any dangerous wound.

It is also his duty to interfere in the case of any riot, assault, or other breach of the peace, and to stop or prevent the same by arresting the persons he se&s actually engaged therein.

to commit treason, felony, or any breach of the peace, but if the threat is merely an idle one and there is no breach of the peace, an arrest would not be advisable.

He may arrest any person who assaults or obstructs him in the discharge of his duty.

He cannot at common law, arrest without warrant for an ordinary assault not committed in his presence, nor ought he arrest without warrant after an affray is over and is not likely to be renewed.

He cannot arrest without warrant on a charge of misdemeanour unless express power to do so is given by statute; but he can, at common law, arrest without warrant a person attempting to commit a felony although such an attempt may be a misdemeanour at common law. He can, at common law, arrest without warrant when a breach of the peace is com-

believing it is about to be committed or renewed in his presence.

In *North v. Pullen* (1961) it was held that a Constable has power to arrest any person who in his presence commits a misdemeanour or breach of the peace, if the arrest is effected at the time when, or immediately after, the offence is committed, or while there is a danger of its renewal.

(2) On his own suspicion. A constable who knows that

a felony has been committed and who has reasonable grounds to suspect a person of having committed it may arrest that person.

or felony has been committed by- any person or that a dangerous wound has been given by any person may arrest such person. If it should afterwards appear that no such offence has been

If it is established that the person so arrested is not concerned in a crime, he should be released.

Reasonable suspicion that a person has committed outside England what would be a felony here does not justify arrest without warrant. The Fugitive Offenders Act, 1881 (see Chap. 2) may apply to such cases (*Diamond v. Minter* (1941)).

(3) On the charge of a third person. When a person

requests a constable to take another person into custody, alleging such other person is guilty of treason, or felony, or inflicting a grievous wound, the constable should, if the charge

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*is* reasonable, and made by a person deserving of credence, arrest the person so charged.

In such a case the constable, if he does not act, may render himself liable to punishment, but before taking action he should consider the repute of the person making the charge and also of the person accused, as well as the seriousness of the offence charged.

given to the constable, leaving him to act or not act upon it as he may think right, the constable should make inquiry into the allegation and act very cautiously. If the offence alleged is a misdemeanour he has no power to arrest unless he procures a magistrate's warrant.

Felonies include treason and the more serious offences against person or property, such as murder, manslaughter, rape, robbery, wounding, assault with intent to rob, attempt to murder, causing injury by explosives, burglary, housebreaking, larceny, embezzlement, arson, attempted arson, piracy, making

sacrilege.

2. Arrest without Warrant by Statute. Many Acts of Parliament contain provisions empowering a constable to arrest without warrant in specified cases of felonies, misdemeanours, and summary offences. See the following alphabetical list :

Aliens Restriction Acts, 1914 and 1919. Aliens Order, 1953, Art. 28. Any person who acts in contravention of this

arrested without warrant by any constable. See Chap. 29 for

may stop and detain any person seen or found committing,

under), and may arrest such person without warrant if hi\*

satisfaction of the constable. A constable may also without

execution of his duty under the Act or the orders or regulations made thereunder. See Chap. 35.

Animals. Protection of Animals Acts, 1911 to 1960. S. 12

warrant any person who he has reason to believe is guilty of an offence under these Acts which is punishable by imprisonment without the option of a fine (cruelty to an animal), whether upon his own view thereof or upon the complaint and information of any other person who shall declare his name and place of abode to the constable. See Chap. 35.

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Dangerous Drugs Act, 1951, s. 19. Any constable may arrest without warrant any person who has committed or attempted to commit, or is reasonably suspected by the constable of having committed or attempted to commit, an offence against the Act if he has reasonable ground for believing that that person will abscond unless arrested, or if the name and

by him. See Chap. 39.

Drilling. Unlawful Drilling Act, 1819, *a.* 1. Any meeting for the purpose of its members being drilled without lawful authority may be dispersed by any constable and those present may be arrested. See Chap. 20.

Ecclesiastical Courts Jurisdiction Act, 1860, ss 2 and 3. Any person molesting, etc., any authorised preacher or clergyman celebrating Divine Service, etc., or "brawling" in a place of religious worship or churchyard may be arrested by a constable or churchwarden. See Chaps. 20 and 29.

Explosives Act, 1875, s. 78. Any person found committing any act for which he is liable to a penalty under this Act or the bye-laws or rules made under it, and which tends to cause explosion or fire in or about any factory, magazine, store, railway, canal, harbour, wharf, carriage, ship, or boat, may be arrested without warrant by a constable. See Chap. 33.

Firearms Act, 1937, s. 6. A constable may demand from any person whom he believes to be in possession of a firearm or ammunition to which Part I of the Act applies (*viz.* any

etc.) the production of his firearm certificate. If he does not produce such certificate and allow it to be read, or does not show that he is exempt from the necessity of having a certificate, the constable may seize the firearm or ammunition and require the person to give his name and address. If any person refuses so to give his name and address, or is suspected of giving a false name or address, or of intending to abscond, the constable may arrest him without warrant. When executing a search warrant under the Act, a constable may arrest without warrant any person found on the premises whom he has reason to believe to be guilty of an offence under the Act (s. 26). See Chap. 34.

Game Laws (Amendment) Act, 1960, s. 1. A police constable may arrest a person found on any land committing an

refer to persons trespassing in pursuit of game by night). The

provides that occupiers of land may require any person found in pursuit of game in the daytime to quit the land and give his name and address, and if he fails to do so, may arrest him) shall also be exercisable by a police constable. See Chap. 19.

Gun Licence Act, 1870, s. 9. Any constable may demand from any person using or carrying a gun (unless exempt by law) the production of his licence under the Act. If such

and permit it to be read the constable may require him to give his name and residence, and if he refuses he may be arrested. See Chap. 34.

Hawkers Act, 1888, s. 6. Any constable may arrest without warrant any person doing any act for which a hawker's licence is required by this Act, and who has no proper licence in force in that behalf or who does not immediately produce on demand a proper licence granted to him or his master and then in force, and bring him before a Justice to be summarily dealt with. See Chap. 31.

Highways Act, 1959, s. 121. If a person, without lawful authority or excuse, in any way wilfully obstructs the free

constable may arrest without warrant any person whom he sees committing the offence. See Chap. 24.

Indecent Advertisements Act, 1889, s. 6. Any constable may arrest without warrant any person whom he shall find committing any offence against this Act. See Chap. 11.

Larceny Act, 1861, s. 103 Larceny Act, 1916, s. 41. Any person found committing any offence under these Acts, except

misdemeanour of publishing or threatening to publish with intent to extort (1916 Act, s. 31), may be arrested without warrant by any person. Also any constable may arrest without warrant any person he finds lying or loitering in any highway, yard or other place during the night whom he shall have good cause to suspect of having committed or being about to

1916 Act).

See Chaps. 14 and 28.

Licensing Act, 1872, s. 12. Any person who in any public place is drunk and disorderly, or drunk in charge of any carriage, horse, steam engine or cattle, or who (anywhere) is drunk in possession of loaded firearms may be arrested. See Chap. 38.

Licensing Act, 1902, is. 1 and 2. Any person found in a public place or licensed premises, drunk and incapable, or drunk while in charge of a child apparently under the age of seven years may be arrested. See Chap. 38.

Licensing Act, 1953, s. 152. A constable executing a search warrant for intoxicants in unlicensed premises, when he has seized or removed liquor, may demand the name and

are not satisfactory, he may arrest him without warrant. See Chap. 38.

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Malicious Damage Act, 1861, s. 61. Any person found

warrant by any constable or by the owner of the property  
Chap. 16.

Mental Health Act, 1959, s. 136. A constable may arrest a person suffering from mental disorder and in immediate need of care or control, whom he finds in a public place, and take him to a place of safety.

Municipal Corporations Act, 1882, s. 193, and Police Act, 1946, s. 1 (4). A county borough constable may, while on

pect  
of intention to commit a felony. See Chap. 28.

Official Secrets Act, 1911, s. 6. Any person who is found committing an offence under this Act, or who is reasonably suspected of having committed or having attempted to commit

without warrant. See Chap. 20.

Pawnbrokers Act, 1872, s. 34. A pawnbroker may detain any person offering in pawn any article which he reasonably suspects to have been stolen or illegally or clandestinely

Pedlars Act, 1871, s. 18. Any person acting as a pedlar, who refuses to produce to a constable his pedlar's certificate or who has none, or who refuses inspection of his pack, may be arrested without warrant by the constable. See Chap. 31.

Person and Property. Offences against the Person Act, 1861, s. 66, and Malicious Damage Act, 1861, s. 57. Any constable may arrest without warrant any person whom he shall find lying or loitering in any highway, yard or other place during the night and whom he shall have good cause to suspect

loitering).

Poaching. Night Poaching Act, 1882, s. 2. The owners or arrest any persons found offending against the Act and deliver them to a constable. This power is extended to police constables

Prevention of Crimes Act, 1871, s. 7. For arrest of a "special offender," »»» Chap. 28.

Prevention of Crime Act, 1953. The power of arrest for without authority or reasonable excuse having an "offensive weapon" in a public place is given under "Robbery", see Chap. 14.



### CHAPTER III. ARREST

Prevention of Offences Act, 1851, M. 11 and 13. Any person found committing (that is in the act of committing) any indictable offence between the hours of 9 P.M. and 6 A.M. may be arrested without warrant by any person.

Prison Act, 1952, s. 49 (and C.J. Act, 1961, s. 30). Any person sentenced to imprisonment, corrective training, preventive detention or borstal training, or ordered to be detained in a detention centre or committed to a prison or remand centre, who is unlawfully at large in the United Kingdom, Channel Islands or Isle of Man, may be arrested by a constable without warrant and taken to the place where he is to be detained. S. 8: Every prison officer while acting as such shall have all the powers, authority, protection and privileges of a constable. See Chap. 28.

Public Health Act, 1925, s. 74 (2). Any person riding or driving so as to endanger the life or limb of any person or to the common danger of the passengers in any street outside the Metropolitan Police District may be arrested without warrant by any constable who witnesses the occurrence. This section may be applied by Order to any rural district. Metropolitan Police Act, 1839, s. 54, gives the same power in that district. See Chap. 24.

Public Order Act, 1936, s. 7. A constable may without warrant arrest any person reasonably suspected by him to be committing an offence under s. 1 (political uniforms), s. 4 (offensive weapons) or s. 5 (offensive conduct) of the Act. By s. 6 he may also arrest without warrant for an offence under the added sub-section to s. 1 of the Public Meeting Act, 1908 (disorderly conduct). See Chap. 22.

Representation of the People Act, 1949. Similar power of arrest for disorderly conduct at a political meeting is given by

misconduct or alleged personation in a polling station. See "Election Offences," Chap. 21.

Riot Act, 1714, s. 3. Persons to the number of twelve or more unlawfully, riotously, and tumultuously assembled together and not dispersing within one hour after proclamation of the "Riot Act" may be arrested without warrant. See

Road Traffic Act, 1960. A constable may arrest without warrant:

(a) a person who, when driving or attempting to drive, or when in charge of a motor vehicle on a road or other public place, is unfit to drive through drink or drugs, (s. 6).

(b) a person who, when riding a bicycle or tricycle, on a road or other public place, is unfit to ride through drink or drugs (

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(c) a person reasonably suspected of taking or attempting to take a motor vehicle without the owner's consent or other lawful authority or, knowing that a motor vehicle has been so taken, drives it, or allows himself to be carried in or on it without such consent or authority (s. 217 as amended by s. 44 R.T. Act, 1962).

(d) the driver of a motor vehicle who within his view commits an offence of dangerous or careless driving on a road, unless the driver either gives his name and address or produces his licence (s. 228).

(e) the rider of a bicycle or tricycle who within his view commits an offence of dangerous or careless cycling on a road,

See Chap. 24.

Sexual Offences Act, 1956. A constable may arrest without warrant in a case of procuration (s. 40), and anyone may arrest without warrant in a case of a man living on prostitution, or of a woman controlling a prostitute or of a man soliciting in a public place (s. 41). See Chap. 10.

Street Offences Act, 1959, s. 1. A constable may arrest without warrant anyone he finds in a street or public place and

loitering or soliciting in such street or public place for the purpose of prostitution. See Chap. 10.

Town Gardens Protection Act, 1863. A constable may borough set apart for the use of the inhabitants. See Chap. 15.

Town Police Clauses Act, 1847, s. 28. Any constable may street (in an urban district where the Act is in force) commits

Vagrancy Act, 1824, s. 6, and Penal Servitude Act, 1891, ». 7. Any person may arrest without warrant any suspected person or reputed thief loitering in any street, etc., with intent

Vagrancy Act, 1824, a. 6. Any person found offending against the Act may be arrested without a warrant by any person and conveyed before a justice or delivered to a constable who is

However by Criminal Justice Act. 1948, s. 68, a fortune teller, palmist, etc., can be so arrested only by a constable and not even by him unless he believes the offender will abscond

offender. See Chap. 27.

arrest is given in the appropriate succeeding chapters.

Where a person is arrested without a warrant for an offence Court as soon as practicable (M.C. Act, 1952, s. 38 (4)). After arrest without warrant the prisoner should be taken as soon as

before a justice or to a police station (where the officer in charge has power to grant bail (see "Bail by Police" Chap. 5). He should not be taken to the scene of the crime. If after such an arrest the officer becomes satisfied that the prisoner is not guilty of the crime he should release him.

Unnecessary Arrests. The main object of an arrest is that the person should be made amenable to the law, and a constable should be most careful to avoid unnecessary arrests. Arrests should not be made for minor offences when the offenders may be made amenable by summons. A constable has great powers of arrest, but he should exercise these powers with intelligence and discretion.

3. Arrest with Warrant. A warrant to arrest is a written authority signed by a Justice directing the arrest of an offender so that he may be dealt with according to law.

A warrant to arrest should give the offence charged, the authority under which the arrest is to be made, the person or

It may contain a direction admitting the prisoner to bail. See " Warrants " and " Bail by Police," Chap. 5.

In cases in which immediate arrest is not necessary it is wiser to obtain a Justice's warrant authorising the arrest of the offender.

If there is power at Common Law or under any Act to arrest a person without warrant, a warrant for his arrest may be issued (C.J.A. Act, 1914. s. 27).

No action may be brought against a constable who has acted under a Justice's warrant until demand in writing for perusal and copy of the warrant has been made and refused or neglected for six days after such demand. If action is brought (and it must be brought within six months), on production and proof of the warrant, the jury must find for the constable notwithstanding any defect of jurisdiction in the Justice (Constables Protection Act, 1750).

Re-arrest. If a person is arrested without warrant on a particular ground and later only a charge based on another

and re-arrested on the new charge.

## COURTS OF JUSTICE

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Courts of Justice. There are several courts before which criminal offences may come, as follows:

1. The High Court of Parliament, or the House of Lords. This Court is composed of the Lords of Appeal, who are lawyers of eminence holding peerages and members of the House of

Divisional Court of the Queen's Bench Division in a criminal cause or matter, or from any decision of the Court of Criminal Appeal. No such appeal shall lie except with the leave of the court below or of the House of Lords.

2. The Court of Criminal Appeal, which consists of the Lord Chief Justice of England and the Judges of the Queen's Bench Division of the High Court, and which may deal with criminal cases brought before it on appeal. See "Appeal," Chap.5.

The High Court of Justice, of which the principal Courts for present purposes are :

(1) The Queen's Bench Division of the High Court, which consists of the Lord Chief Justice, who is president, and other judges. One Judge, sitting and acting as a Judge of the High Court, has all the jurisdiction and powers of the High Court. Judges of the Queen's Bench Division sit in London and can deal with criminal cases and cases brought before the court by an order of certiorari or habeas corpus, or on a case stated, etc.

(2) Courts of Assize. England and Wales is divided into seven circuits or areas. Two Judges of the High Court

of Justice visit each circuit at least twice a year to deal with all civil and criminal cases listed for hearing at these Assizes.

These Judges of Assize should try prisoners then awaiting trial in prison or on bail, so that prisoners may not be left too long untried. The Assize for London is held at least twelve times a year and is known as the Central Criminal Court.

and maintenance matters, family allowances and marriage under 21 and is not an open court. Newspaper reports of such proceedings are restricted to prescribed particulars and any contravention requires the consent of the Attorney-General before

The Coroner's Court deals with inquiries (inquests) as to the cause of the sudden or violent or unnatural death of any person, and also inquires into cases of treasure trove (value of this Court and may have the assistance of a jury. See "Coroners and Inquests," Chap. 39.

Justices of the Peace. -A Justice is a magistrate appointed by the Crown to try summary offences, to deal with offences determinable in a summary

Justices are appointed for counties or boroughs. They receive no salary but may get travelling and lodging allowances. Before a Justice may act he must take the judicial oath and the oath

Commission of the Peace but he may be placed on the supplemental list owing to age or for other reasons. See Justices of the

A Justice for a county may act as a Justice for any county or county surrounds or adjoins, and a Justice for a borough may act as a Justice in any county or borough adjoining (M.C. Act, 1952, ss. 116, 117).

A Stipendiary Magistrate is a barrister or solicitor appointed to act as a paid magistrate. He is a Justice of the Peace and can do alone any act which by law requires two or more Justices (M.C. Act, 1952, s. 121).

Justices usually act as such sitting in courts or sessions.

The ordinary sittings or sessions in court of the Justices are termed Magistrates' Courts and take place in an open court-house. These are Courts of Summary Jurisdiction.

This Court is often called the Police Court, as in it the Justices deal with persons who attend on summons or in custody charged with offences at the suit of the police.

County Justices may sit in the Court of County Quarter Sessions. Justices sit in Special Sessions for the discharge of certain administrative duties such as the granting of licences.

A single Justice sitting alone in a court-house may deal with a few summary offences (such as drunkenness) when the power to do so has been specially given by the Act of Parliament creating the offence.

A single Justice may receive informations and complaints, issue summonses and warrant\*, and under i. 4, M.C. Act, 1952,

disposed of then and there, and can, if it thinks fit and is so allowed by statute, deal with many indictable offences under circumstances laid down by statutes. It can also send an accused person to be dealt with by a higher court.

can try all summary offences committed within its county or borough. It has jurisdiction, when the magistrates are sitting as examining justices (see later), over any offence committed by a person who is before the court whether or not the offence was committed within the county or borough.

Where the magistrates are sitting as examining justices they to try under ss. 18, 19, 20 or 21 of the Act (s. 2).

As far as this Act is concerned "summary offence" means an offence which if committed by an adult (17 years or over) is triable (s. 125).  
dictment) except the 19 indictable offences which may be tried summarily with the consent of the accused under s. 19 of the Act paper

if committed by an adult is triable on indictment (whether or not it is also triable by a summary court) except an offence otherwise triable only by a summary court but which under s. 25 of the Act (right to claim trial by jury) or any other Act is required to be tried on indictment by the accused or the prosecutor (s. 125).

A Juvenile Court under the Children and Young Persons Act, of specially qualified justices (2nd Sched.) and deals with charges against and applications relating to children and young persons (s. 46). See the Summary Jurisdiction (Children and Young Persons) Rules, 1933, 1938, 1950, 1952, 1953.

tion, place of sitting and procedure of magistrates' courts have effect as regards juvenile courts subject to any special rules regarding such courts (s. 130).

It should deal with persons under seventeen (who are not

C.J. Act. 1948, 9th Sched.). It sits apart (different room or date) from other Courts, and is not an open Court (s. 47). See "Open Court," later and "Treatment of Youthful Offenders," Chap. 12.

A Domestic Proceedings Court is somewhat similar to a juvenile court. It deals with guardianship of infants, separation

and maintenance matters, family allowances and marriage under 21 and is not an open court. Newspaper reports of such pro-

venbon requires the consent of the Attorney-General before prosecution (M.C. Act, 1952, ss. 56 to 62).

The Coroner's\* Court deals with inquiries (inquests) as to the cause of the sudden or violent or unnatural death of any person, and also inquires into cases of treasure trove (valu

of this Court and may have the assistance of a jury. See " Coroners and Inquests," Chap 39.

Justices of the Peace. A justice is a magistrate appointed by -  
plaints of uttciii.es. to deal with offences detenninable in a summary way, and to commit offenders for trial by jury.

Justices air appointed for counties or boroughs. They receive no salary but tn.iy get travelling and lodging allowances, lie fore a Justice may act he must take the judicial oath and the oath

Commission of the Peace but he may be placed on the supplemental list < to age or for other reasons. See Justices of the Peace Act. 19-19.

A Justice for a county may act as a Justice for any county or borough adjoining and in any detached part of a county which his as a Justice in any county or borough adjoining (M C. Act. 1952. ss. 11». 117)

A Stipendiary Magistrate is a barrister or solicitor appointed to act as a paid magistrate. He is a Justice of the l\*ease and can do alone any act which by law requires two or more Justices (M.C. Act. 1952. s. 121)

Justices usually act as such sitting in courts or sessions.

The ordinary sittings or sessions in court of the Justices are termed Magistrates' Courts and take place in an open court-house. These are Courts of Summary Jurisdiction.

with offences at the suit of the police.

County Justices may sit in the Court of County Quarter Sessions. Justices sit in Special Sessions for the discharge of certain administrative duties such as the granting of licences.

A single Justice sitting alone in a court-house may deal with a few summary offences (such as drunkenness) when the power to do so has been specially given by the Act of Parliament cutting

A single Justice may receive informations and com plaints. issue summonses and warrants, and under > 4. M C Act. 1952.

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**he can as an examining justice hold the preliminary inquiries into indictable offences which are known as "taking depositions," and discharge the prisoner or send him for trial on indictment.**

"Examining justices" means the justices before whom a term includes a single examining justice (C.J. Act, 1925, s. 49 (2)).

A Justice who is a member of a local authority must not act in a court dealing with any proceedings by or against the local authority. (Justices of the Peace Act, 1949, s. 3).

A single Justice has power, even when not sitting in a court, to bind over persons who quarrel or commit a breach of the peace

However, this power is seldom exercised, and a Justice as a rule does not act judicially unless as a Justice in a Court.

Justices were originally appointed for the conservation of the peace, but their jurisdiction and powers have been greatly extended by Acts of Parliament. They now have power to deal summarily with many offences, including a number of those indictable offences regarding which they formerly could hold only a preliminary inquiry to ascertain whether the case was one which ought to be sent for trial by a jury (see s. 19 M.C. Act, 1952, for

Proceedings before Justices. The proceedings of magistrates' courts and examining justices are now regulated by the M.C. Acts, 1952 and 1957 and M.C. Rules, 1952 to 1961. (References in brackets are to the 1952 Act unless otherwise stated).

*Magistrates' Courts.* On the summary trial of an information the Court shall, if the accused appears, tell him the charge and ask him whether he pleads guilty or not. After hearing the evidence and the parties, the Court shall convict the accused or dismiss the information. If accused pleads guilty the court may convict him without hearing evidence (s. 13). The M.C. Act, 1957, as supplemented by the M.C. Rules, 1957, introduced a procedure

defendants, in certain circumstances, to plead guilty without appearing in Court, and also provided for the easier proof of previous convictions in the defendant's absence.

to initiate the new procedure, by serving with the summons a notice outlining the procedure and another notice giving a "Statement of Facts," which will be read to the Court. At the

ment of Facts ". After conviction, the Court may take into account any previous convictions if satisfied that the defendant has had 7 days' notice served upon him, in the prescribed manner, that the convictions would be brought to the notice of the Court. This procedure may not be need for an offence triable on indictment.



nor for an offence punishable by more than 3 months' imprisonment. The Court may at any time adjourn the trial (s. 14). See "Remand" Chap. 5.

If the prosecutor appears but the accused does not, the court, hearing. If the conditions of this section and of s. 4, M.C. Act, 1957 are satisfied the court may issue a warrant to arrest him and bring him before the Court (s. 15).

If the accused appears but the prosecutor does not the Court proceed in the absence of the prosecutor or adjourn the trial (s. 16).

If both prosecutor and accused do not appear the Court may received on a previous occasion (s. 17).

before a Magistrates' Court may be represented by counsel or solicitor and an absent party so represented shall be deemed not to be absent except in cases where law or recognizance require his presence (s. 99).

A magistrates' court shall not impose imprisonment for less than 5 days and shall not order imprisonment on any person

sentence of imprisonment on an offender under 21 (C.J. Act, 1948, s. 17) nor on a first offender of or over the age of 21 (First Offenders Act, 1958, s. 1). Their power to order imprisonment is dealt with in s. 108 and to order detention in ss. 109 to 111.

to any person aggrieved, on his application, for any loss of property through the felony, up to jf 100 (s. 34). See also s. 4, Forfeiture Act, 1870 and s. 8, C.J. Act, 1961, later in Chap. 18.

supervision of the offender until the fine is paid.

Justices sitting in a magistrates' court may, when necessary, act as examining justices.

*Examining Justices.* The functions of examining justices may be discharged by a single Justice. They need not sit in open court. Evidence shall be given in the presence of the accused and the defence may question any witness (s. 4).

A witness's evidence shall be taken down in writing and his deposition shall be signed by the Justice. The accused can give

solicitor shall be heard on his behalf (M.C. Rules, 1952, I. 5).

The justices shall bind each witness examined (except the ac-

attend and give evidence before the court of trial (see "Deposition" Chap. 6) and they shall bind the prosecutor to prosecute

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ETC.

before that court, but the latter need not be so bound over in a

Where the attendance of a witness at the trial may not seem necessary because of any statement or admission of the accused or because his evidence is merely formal, he may be bound over conditionally, that is not to attend the trial unless given notice to do so by either party. If a witness refuses to be bound over the justices may commit him to custody until after the trial or until he sooner enters into the recognizance (s. 5).

The justices may at any time adjourn the hearing and remand the accused (s. 6) see "Remand" Chap. 5. Any statement by

and signed by one of the justices (M.C. Rules, 1952, r. 5) and may be given in evidence at his trial without further proof (C.J. Act, 1925, s. 12 as amended by 5th Sched., M.C. Act, 1952).

If satisfied that there is sufficient evidence to put the accused on trial for any indictable offence, the justices shall commit him in custody for no other cause, they shall discharge him (s. 7).

are given in ss. 9 to 12 of the M.C. Act, 1952 and s. 14 C.J.A. Act,

**Trial by Jury.** For criminal law purposes a jury is a body of persons called together to give a decision on a criminal matter.

It is the right of every adult to be tried for any serious crime by a jury of his fellow citizens and it is the duty of his fellow citizens to attend for the purpose when summoned to do so by

sions and occupations are exempted from jury service, and aliens, infamous criminals, and outlaws are disqualified (Juries Acts).

Persons, summoned to attend as jurors, who do not attend, may be fined by the Court.

There are two stages in a criminal trial by jury.

1. **Preferring the Indictment.** Before a criminal charge can be tried at Assizes or Quarter Sessions a written accusation of the

the Court and approved by the proper authority.

If a person has been committed for trial for an indictable

has consented to or directed such a trial, or if an order under s. 9 of the Perjury Act, 1911, has been made directing prosecution for

may be preferred by any person before a Court in which he may lawfully be indicted for that crime. If this has been correctly

directs, the bill of indictment shall be signed by the Clerk of Assizes (at Assizes) or the Clerk of the Peace (at Quarter Sessions)

and it shall thereupon become an indictment. The Indictments (Procedure) Rules, 1933, regulate the manner in which a Judge may direct a voluntary bill of indictment where the accused has not been committed for trial by Justices. See Administration of Justice (Misc. Provisions) Act 1933, *a. 2*.

Thus, where a person is sent for trial by the Justices or by a Judge, etc., and a bill of indictment against him is framed and handed in (by the prosecution), and is duly signed by the Clerk of the Court, the case is ready for trial by a jury.

attend at Assizes or Quarter Sessions as persons qualified and liable to serve as jurors is prepared and is in readiness in Court. A jury consists of 12 persons, the first 12 names called at random

their place in the jury box they are sworn to well and truly try the case and to give a true verdict according to the evidence.

ceeds. If a juror dies or has to be discharged through illness, if both sides assent in writing and if the number of jurors is not reduced below ten, the case can continue and a verdict may be given (C.J. Act, 1925, s. 15).

The duty of the jury is to listen to the evidence and to give their verdict whether the prisoner is innocent or guilty.

Before the 12 jurors are called to come to the jury box, the prisoner should be informed that he has a right to challenge (or object to) any or all of them before they are sworn.

The Crown or the prisoner may challenge the array, that is the whole panel or list of jurors summoned by the Sheriff, or may challenge the polls, that is individual jurors, and cause or good reason for every such objection must be shown.

A person charged on indictment for felony or misdemeanour may challenge peremptorily not more than 7 jurors without cause, and any juror or jurors for cause (C.J. Act, 1948, s. 35). The

to enter the jury box when called, but to remain in their places in the court as they are not wanted on that particular jury.

A jury must be unanimous in its verdict. It must not have any communication with the outside public, and a juror must

attempting by any corrupt means to illegally influence jurors or incline them to favour one party in the case. It is also a common law misdemeanour to personate a jurymen.

**Progress of a Case.** As shown in Chapter 1, offences may be arranged in two groups, viz. Indictable Offences, which include felonies and misdemeanours, and Summary Offences, which are termed non-indictable. How a case may be dealt with will

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The alleged offender (who must be present) is either arrested and brought before a summary court or examining justices or comes on summons before a summary court. If the case is dealt with

recorded in writing in the form of depositions (See Chap. 6) and the justices or court can discharge him or commit him (in custody or on bail) for trial at Quarter Sessions or Assizes.

At such a court an indictment is preferred, the witnesses give evidence (against him and for him) and a jury decides whether he is guilty or not guilty. If guilty, the Judge, Recorder or Chairman of the court pronounces sentence. If convicted, the offender may appeal to the Court of Criminal Appeal and may have a further appeal to the House of Lords. See "Appeal," Chap. 5. However this procedure in indictable cases may not always be followed :

(a) A child (under 14) charged before a summary court with an indictable offence other than homicide shall be tried summarily (and may be fined) provided that if charged

(6) A young person (14-17) charged with any indictable offence other than homicide may consent to be dealt with summarily (M.C. Act, 1952, s. 20).

(c) Persons of 17 and over charged before summary courts with certain indictable offences may consent to be dealt with summarily (M.C. Act, 1952, s. 19).

These indictable offences are given in the First Schedule (s. 19) to this 1952 Act as amended by the Third Schedule of the C.J.A. Act, 1962, which include offences under:

(1) Larceny Act 1861, s. 27; (2) Malicious Damage Act, 1861, ss. 16, 20, 21, 51; (3) Offences against the Person Act, 1861, ss. 20, 27, 47, 60; (4) Telegraph Act, 1868, s. 20; (5) Debtors Act, 1869, s. 13 (1); (6) Falsification of Accounts Act, 1875;

Act, 1953, ss. 52 to 58; (9) Perjury Act, 1911, s. 5, *re* statutory declarations; (10) Forgery Act, 1913, ss. 2 (2) (a), 6, 7 (a) where value of money or property does not exceed £100; (11) Larceny Act, 1916 ss. 2, 4, 5, 8, 9, 10, 12, 13 (a), 14, 15 (1) (2), 16, 17 (1) (2), 18, 20 (value not exceeding £100), 24 (sacrilege where felony committed in the place is included in this list), 26 and 27 (housebreaking but not breaking into a dwelling-house), 28 (see chap. 13), 32 (1), 33 (1) (2), 35 (aiding and abetting the aforesaid offences); (12) Criminal Justice Act, 1925, s. 36;

(13) Agricultural Credits Act, 1928, s. 11; (14) Coinage Offences Act, 1936 (all misdemeanours); (15) Publishing, exhibiting or selling indecent or obscene matter; (16) Indecent assault on male or female; (17) Offences re national insurance stamps; (18)

Aiding, abetting, counselling or procuring the commission of any of the preceding offences, attempting to commit any such offence, and attempting to commit any offence which is both

ment to commit a summary offence or to commit any offence mentioned in paragraphs 1 to 18 of the Schedule.

charged with an offence (not an assault or an offence under ss. 30, 31 or 32 of the Sexual Offences Act, 1956) punishable with imprisonment exceeding 3 months, has the right to claim trial by jury and if he does the case will be dealt with as indictable (M.C. Act, 1952, s. 25). (2) *Procedure in offences punishable summarily or on indictment* : The Magistrates Courts Act, 1952, s. 18, deals with such cases as follows:

Where an information charges a person with such an offence the summary court shall, if the accused is 14 or over, proceed as if the case was indictable unless the court having jurisdiction to try the case summarily, determines to do so on the application

(1) and (2)).

Where the magistrates under sub-s. (1) have begun to try such a case summarily, they may, at any time before the conclusion of the summary trial and proceed to inquire into the case as examining justices (sub-s. (5)). But, except as thus provided in s. 18 (5) (ors. 13 C.J.A. Act, 1962), a summary court, having begun to try

indictable (s. 24).

Where the magistrates, under sub-s. (1), at any time during the inquiry, on representations made by either party in the presence of the accused, they may proceed to try the case summarily but if the Director of Public Prosecutions is prosecuting his consent is necessary (sub-s. (3)). If such a summary trial is agreed on, any evidence already given before the examining justices shall be deemed to have been given to the court for the purposes of the summary trial (s. 23), but unless

purpose by the prosecutor or accused (M.C. Rules, 1952, r. 21).

accused or the prosecutor to claim that a summary offence shall be tried by a jury (sub-s. (6)) and under s. 127 it applies to misdemeanours under s. 37 of the Malicious Damage Act, 1861. See "Telegraphs," Chap. 26.

with summarily. This can be done at any time during the

inquiry, after representations made in the presence of the accused by either party, if the court considers it expedient and the accused consents. If the Director of Public Prosecutions is the prosecutor his consent is necessary as is the consent of the prosecutor in a case affecting the property or affairs of the Crown or of a public body (M.C. Act, 1952. *a.* 19).

The accused should be told of his right to be tried by a jury

summarily, to be tried by a jury, and should be told (as directed by s. 19), if the offence is triable by Quarter Sessions, that if convicted summarily, the court, on hearing his character and antecedents, may commit him under s. 29, M.C. Act. 1952 in custody to Quarter Sessions for heavier punishment in accordance with s. 29 of the C.J. Act, 1948. See " Previous Convictions." Chap. 7.

Where, under s. 19 (5) or s. 20 (4) of M.C. Act. 1952 a magistrates' court has ceased to inquire into an information summarily, the court may, at any time before the conclusion of the evidence for the prosecution, discontinue the summary trial and resume the inquiry as examining justices (C.J. A. Act, 1962, s. 13).  
(3) *Procedure in a summary offence case.* The offender comes before a magistrates' court usually on summons but sometimes on arrest with or without warrant. The evidence is heard and the justices give their decision. A person thus convicted may appeal to Quarter Sessions, or may take a special case stated on a point of law to the Queen's Bench Division. The decision of Quarter Sessions on any question of fact is final, but that Court may state a special case on a point of law for the opinion of the Queen's Bench Division. See " Case Stated," Chap. 5.

If a person of 14 or more is charged with a summary offence (which is not an assault nor an offence under ss. 30, 31 or 32 of the

son  
and before he pleads to the charge, he should be informed by the court that he has the right to claim trial by jury. (M.C. Act, 1952. s. 25). If his right to so claim is based on the fact that he

enquiry to verify the fact of his previous conviction (M.C. Rules 1952. r. 23). Proper proof of such conviction seems advisable.

Where the prosecutor is entitled to claim trial by jury he must make his claim before the accused pleads to the charge.

If either party, being so entitled, makes such claim, the case has to be treated as indictable.

Where an accused of 17 or over is charged with a summary offence for which he may claim trial by jury and which is also triable on indictment by Quarter Sessions, if the court, having begun to inquire into it as an indictable offence then proceeds under s. 18 of the Act (see above) to deal with it summarily, the

court shall, before asking the accused if he wishes to be tried by a jury, explain to him that if tried summarily and convicted he may be committed to Quarter Sessions (under s. 29) if his character and antecedents call for greater punishment than the summary court can inflict (M.C. Act. 1952, s. 25).

**Open Court.** The general rule regarding the trial of an offence, whether indictable or summary, is that the trial should take place in open public court—that is, in a room or place to which the public generally may have access so far as the same may conveniently contain them (see M.C. Act, 1952, s. 98 (4)).

All evidence in a case must be given in Court in the presence of the accused or his advocate (*R. v. Bodmin Justices, Ex-parte McEwen* (1947)).

This "open court" rule does not apply to the taking of evidence by examining justices in indictable cases which are not for summonses or warrants, and such preliminary steps preceding actual trial may be taken privately.

Also it has been established by decided cases that a Court has an inherent power to exclude the public from a trial if it is necessary for the administration of justice, but such power should be exercised only for good reason (see 92 J.P.N. 79).

No person other than Court officials, persons concerned in the case, and press representatives, is allowed to attend in a s. 47); and the same rule applies to Domestic Proceedings Courts (M.C. Act, 1952, s. 57).

The only persons prohibited by law from being present as spectators in court are children under fourteen years of age, not being infants in arms. If a child is present in court he shall be removed unless he is the accused or during such times as his presence is required as a witness or otherwise for the purposes of justice, but the prohibition does not apply to messengers, clerks, etc., required to attend at a court for purposes connected with their employment (C. & Y.P. Act, 1933, s. 36).

When a child or young person is to give evidence in relation to an offence or conduct contrary to decency or morality, the Court may order the court to be cleared and all persons who are not officers of the Court or connected with the case or pressmen shall be excluded from the court (C. & Y.P. Act, 1933, s. 37).

When a witness has to give evidence of indecent occurrences, for instance in cases of rape, sodomy, etc., it is customary for the Court to suggest that females should leave the court.

In any proceedings under the Official Secrets Acts, the Court on the application of the prosecution, may exclude the public

A Court has power to order the removal of persons who disturb the proceedings. See also "Contempt of Court," Chap. 21.

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A Court has power to order witnesses out of court. See " Witnesses " should remain in court until permitted to leave.

**Speeches In court.** Under the Magistrates' Courts Act, 1952, s. 13, on the summary trial of an information, the court will hear the parties in the case who, by s. 99, may be represented by, counsel or solicitor.

On the summary trial of an information where the accused does not plead guilty the prosecutor calls evidence and before doing so may address the court. After the evidence for the prosecution the accused may address the court whether or not he calls evidence. After the evidence for the defence, if any, the prosecutor may call evidence to rebut that evidence. At the conclusion of the evidence if any for the defence, and the evidence in rebuttal, the accused may address the court if he has not

with the leave of the court if accused and any other witness on his behalf have given evidence. If the accused has addressed the court twice, the prosecutor may address the court in reply. (M.C. Rules 1952, r. 17).

M.C. Rules, 1952, r. 18, allows a similar procedure on the hearing of a complaint (civil proceedings) except where the court makes an order under s. 45 of the Act (civil debt, etc.) with the consent of the defendant without hearing evidence.

The " prosecutor " could be the person who, under M.C. Rule 4, laid the information or his counsel or solicitor or other person authorised in that behalf. See also " Lawyers," Chap. 29.

In cases of arrest without warrant the charge sheet would appear to be the "information" and "prosecutor" apparently would include the person who signs the charge sheet as well as the police officer who made the arrest.

Under the Costs in Criminal Cases Act 1952, s. 17, " prosecutor " includes any person at whose institution or who carries on the prosecution.

M.C. Rule 5 deals with the proceedings in a magistrates' court preliminary to the trial of an offence on indictment. After the evidence for the prosecution is taken down in depositions the accused shall be asked does he wish to say anything in reply to the charge. The accused can then make a statement. Counsel or solicitor for the accused shall be heard on his behalf.

If such counsel or solicitor has addressed the court both before and after the evidence is taken, counsel or solicitor for the prosecution shall be entitled to be heard in reply.



## Chapter V

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Information. An information is a charge made before a justice (one justice is sufficient) to the effect that some person has or is suspected of having committed an offence. (M.C. Act, 1952, s. 1). (It is the preliminary step towards obtaining a summons or warrant. The accused person need not be present and, as a rule, *is* not present). An information need not be in writing or on oath unless some law directs it to be in writing or on oath and it can be made by the prosecutor or by his counsel or solicitor or other person authorised in that behalf (M.C. Rules, 1952, r. 4).

When a warrant to arrest is required the information should be written and on oath. A written sworn information is advisable in cases of indictable offences (M.C. Act, 1952, s. 1).

It should give the name, address, and occupation of the person charged and a brief outline of the offence or act alleged together with the time and place where it was committed. The offence should be described in ordinary language and reasonable information of the charge should be given. If the offence is one created by law there should be a reference to the law, giving the section. This applies to every information, summons, warrant or other document made for or in connection with any proceedings before a magistrates' court for any offence (M.C. Rules, 1952, r. 77).

An information should not charge more than one offence but two or more informations can be set out in one document (M.C.

information provided it refers to the same act or offence committed at the same place and time.

A justice in his discretion on an information may grant a summons or warrant (M.C. Act, 1952, s. 1). Where any law gives power to a magistrates' court to deal with an offence or issue a summons or warrant against a person suspected of an offence on complaint of any person, for references to a complaint there shall

Except as otherwise expressly provided by any enactment a magistrates' court shall not try an information unless the information was laid within six months from the time when the offence was committed but this does not restrict summary trial of an indictable offence which may be tried summarily with the consent of the accused but not otherwise (M.C. Act, 1952, s. 104).

No objection to defects in an information shall be allowed (M.C. Act, 1952, s. 100, but see under " Summons " later).

An informant in summary cases may conduct his case, examine and cross-examine witnesses and if necessary give evidence

**Affidavit.** An affidavit is a written statement upon oath taken before any person duly authorised to administer the oath. An affidavit may be made before a Justice or a Commissioner or other person empowered by law to administer an oath.

The knowingly and wilfully making of a false statement in an affidavit is punishable under the Perjury Act, 1911, and the forgery of an affidavit with intent to defraud or deceive is a felony under the Forgery Act, 1913.

The service of a summons may be proved by affidavit.

**Summons.** A summons is a written order signed by a Justice directing the person named therein to appear at a given time in the court named with reference to a matter set out therein.

A summons should state shortly the matter of the information or complaint. If an offence is charged the offence should be described in ordinary language, and if the offence is one created by Statute or Regulation, etc., the section creating it should be given (M.C. Rules, 1952, r. 77). Where two or more informations

summons may be issued against that person or each of those persons in respect of all the informations, provided that the matter of each information (or complaint) shall be separately stated in the summons. Any such summons shall be treated as if it were a separate summons in respect of each information (or complaint)

Proceedings by summons is the usual method of making persons amenable for offences, and the issue of a summons rests in the discretion of the Justice to whom application is made.

Under the M.C. Act, 1952, s. 1, a justice on information before him that a person has or is suspected to have committed an offence, may issue a summons requiring him to appear before a magistrates' court in his county or borough. The issue of the

summons is subject to the conditions laid down in the section and person (ss. 1 and 3).

justices one justice may issue the summons (or warrant) (M.C. Act, 1952, s. 1). A summons remains valid even if the justice who issued it has died or ceased to be a justice (M.C. Act, 1952, s. 101).

Although a summons for an indictable offence has been issued a warrant to arrest may afterwards be issued at any time (M.C. Act, 1952, s. 1).

Witness summonses direct persons to appear before a court and give evidence or produce documents or things.

Where a justice is satisfied that any person in England or Wales is likely to give material evidence or produce any document or thing as material evidence at any inquiry or trial or hearing by a magistrates' court for his area and that person will not voluntarily

directing the person to attend and give evidence etc.

If a justice is satisfied by evidence on oath as above and

complaint). If such person does not attend on summons without just excuse, the court, on evidence on oath, may issue a warrant

If such a witness, in court, refuses without just excuse to be sworn or give evidence or produce any document or thing, the court may commit him in custody for up to seven days or until he sooner complies (M.C. Act 1952, s. 77). Conduct money should be paid or tendered with a witness summons.

As regards civil jurisdiction and procedure, the issue of summons dealt with in ss. 43 to 55 of the M.C. Act, 1952.

Under s. 43 a justice acting for a petty sessions area, when complaint is made to him upon which the local summary court has power to make an order against any person, may issue a summons requiring that person to appear before such court. Under s. 73 and M.C. Rules, 1952, r. 48. on default of payment

issue a judgment summons against the judgment debtor.

Under s. 100 of the M.C. Act, 1952, no objection shall be allowed to any information or complaint or to any summons, or warrant to procure the presence of a defendant, for any defect in substance or form or any variance between it and the evidence at

summons or warrant and the evidence at the hearing has misled the defendant, it shall, on the application of the defendant, adjourn the hearing.

A summons is made out in duplicate, the original may be

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person at his last known or usual place of abode or sent by registered letter or recorded delivery service addressed to him at his last known or usual place of abode.

" Place of abode " means place of residence, where a person lives or sleeps and does not include a shop where he does not reside. Last known or usual means the place where the person had his last known permanent address. Summons by post must not be used for the attendance of a person to give evidence or produce a document or thing or for service of summons outside England and Wales.

If a person fails to appear after service of a summons on him by leaving it with some person at his last known or usual place of abode, or by post, the service is not effective unless it is proved that it came to his knowledge (any letter to that effect shall be

ment issued by a justice on a Corporation may be effected by delivering or sending it by post to the clerk or secretary at the registered office in England or Wales or if no such office, to any place in England or Wales where it trades or carries on business (see M.C. Rules, 1952, r. 76, M.C. Rules, 1957, r. 3, and M.C. Rules, 1961).

not been served within the prescribed time after the commission issued (M.C. Act, 1952, s. 37).

A summons for an indictable offence should be served by a constable and for a summary offence by a constable or other person to whom it shall be delivered.

with the time, place and manner of service and may have to attend court to prove the service,

A summons should be served a reasonable time previous to the hearing of the case and it must be personally served when so directed by the Statute etc. under which proceedings are taken.

A summons, except in cases of treason, felony or breach of the peace should not be served on a Sunday (see " Sunday Process " later).

Summonses and warrants in criminal proceedings within the Metropolitan Police District should be served and executed by a constable of the Metropolitan Police and by none other (Metropolitan Police Act, 1839, s. 12, and M.C. Act, 1952, s. 119).

Process (including summons, warrants, etc.) issued by a summary court in England may be executed in Scotland and (by Order 1928) the Isle of Man if duly endorsed by a justice of the district in which it is to be executed (see Summary Jurisdiction (Process) Act, 1881.)

The service on any person of a summons or document required

court and the handwriting or seal of a justice or other person on any summons, warrant or document issued or made in any such

declaration made under this Rule. The service of any document which should be served and the proper preparation and posting of a letter containing such a document may be proved in a summary court and at Quarter Sessions in appeal cases by a certificate signed by the person who effected the service or posted or registered the letter (M.C. Rules, 1952, r. 55). Service by registered post

Rules. 1961).

Any statement false in a material particular in any solemn

of the service of any document or the handwriting or seal of any person is punishable summarily by up to 6 months' imprisonment or up to £100 fine or both (M.C. Act, 1952, s. 82).

**Subpoena.** A subpoena is a writ or order commanding attendance in court on a certain day named therein under a penalty (*paena*). A witness summons has much the same effect.

Subpoenas are issued either at the Crown Office, London, or

A person served with a subpoena may also be given a reasonable sum of money, sufficient to enable him to get to the court.

Subpoenas may be used to secure the attendance of witnesses. A subpoena may merely direct a witness to attend and give evidence, or it may direct him to attend, give evidence, and produce named documents in evidence.

**Indictment.** An indictment is a written or printed accusation setting out the crime for which a person is to be tried by a Court of Assize or Quarter Sessions.

Hence the term " indictable offence " which is applied to all offences which may be tried at Assizes or Quarter Sessions.

More than one person may be charged with the crime in an indictment, as in the case of conspiracy.

Several crimes may be charged in an indictment, and each will be described in a separate paragraph, called a " count," but no

be put to the prisoner separately and he must be asked to plead to each count (*R v. Boyle* (1954)).

Before a prisoner can be tried for a crime at Assizes or Quarter Sessions, this written accusation, then called a " bill of indictment," must be given to the Clerk of the Court and it must be signed by him. Otherwise the case cannot be heard by the Court and Jury. When so signed the " bill " becomes an " indictment " (see " Trial by Jury," Chap. 4).

The Judge or Chairman, if satisfied that the requirements of the Act have been complied with, may, on the application of the prosecutor or on his own motion, direct the Clerk to sign the bill.

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Act, 1933).

Venue. The venue is the place of trial.

A person charged with an indictable offence may be proceeded  
county or place in which he was arrested or is in custody on a

A magistrates' court may try all summary offences committed  
within its county or borough. It has jurisdiction as examining  
justices over any offence committed by a person who appears or

mitted within its county or borough, and in such cases it has  
jurisdiction to try summarily indictable offences where it has  
power to do so under ss. 18 (3), 19, 20 or 21 of the Act (M.C. Act,  
1952, s. 2).

mitted on boundaries and on journeys begun in one jurisdiction  
and completed in another (M.C. Act, 1952, s. 3).

Accused or Defendant. An "accused" is a person charged  
on information with an offence, summary or indictable and liable

If he is arrested and appears before a court in custody he is  
"the prisoner". At Assizes or Quarter Sessions he must take his  
place in the dock or place for prisoners and face the judge and  
jury being thus the prisoner at the bar of the court.

before a court to defend what he has done or left undone.

(on complaint) by a justice of the petty sessions area, who can  
do so when such court has power to make an order against any  
person upon such complaint (see M.C. Act, 1952, s. 43).

When his case is to be tried the accused's name is called.  
The charge against him is read and he is asked whether he is or  
is not guilty.

accused (M.C. Act, 1952, s. 81).

The trial will then proceed, unless an adjournment is allowed  
by the Court (M.C. Act, 1952, ss. 13, 14). See "Proceedings before  
Justices," Chap. 4 and "Remand," later.

Where a complaint is to be heard the court shall state the  
complaint to the defendant and hear evidence and make an order  
or dismiss the complaint or may adjourn the hearing (M.C. Act,  
1952, ss. 45, 46).

The Criminal Justice Act, 1948, *a.* 30, abolished the privilege  
commits any offence is liable to the ordinary criminal procedure  
instead of being able to claim trial by his peers.

The Poor Prisoner's Defence Act, 1930, provides for the supplying of legal assistance at the cost of the local funds, to accused persons in criminal cases whose means are insufficient to enable them to obtain legal aid.

(1) The committing Justices or the Judge or Chairman of Assizes or Quarter Sessions may grant such a person, if committed for trial (or for sentence) for an indictable offence, a "defence certificate" entitling him to free legal aid, if it is considered desirable in the interests of justice. This should be done if such poor person is committed for trial for murder (s. 1).

(2) A court of summary jurisdiction or examining Justices may grant such person charged with any offence a "legal aid certificate" for free legal assistance, if it is considered desirable by reason of the gravity of the charge or of exceptional circumstances (s. 2).

(3) If the Judge or Chairman of Assizes or Quarter Session\* requests counsel to defend a prisoner to whom a defence certificate has not been granted, the fees of such counsel shall be included in any Court order for costs to be paid out of the local

See also the Legal Aid and Advice Acts, 1949 and 1960 at the end of this chapter.

**Finger Prints.** Where any person not less than 14 years of age who has been taken into custody is charged with an offence before a magistrates' court the court may, on the application of a police officer not below the rank of inspector, order that his finger prints shall be taken by a constable. These may be taken by any reasonable force necessary, either at the court or at any place to which the person may be committed or remanded in custody. If the person is acquitted or discharged by the examining justices, the finger prints and all copies and records thereof shall

Chap. 2.

**N.B.** The direction above as to destruction if prisoner *if* acquitted or discharged applies only to finger prints taken under this s. 40.

**Warrants.** A warrant is a written authority, signed by a Justice, directing the person or persons to whom it is addressed, to arrest an offender to be dealt with according to law, to take a person to prison, to search premises, to levy distress for the non-payment of a legal penalty, etc.

Before a warrant to arrest may be granted it is necessary that a written sworn information should be made and the warrant may be issued by one justice notwithstanding any law requiring the

s.1). The known circumstances of the case should be placed before the Justice, as he has the responsibility for the issue of

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the warrant. When a warrant to arrest is required in a case depending on the evidence of a witness, it will sometimes be advisable to have a sworn information from the witness stating what he can prove, in support of the application for warrant.

On application for a warrant to arrest for an indictable offence the justice may issue a summons and afterwards issue a warrant at any time. A justice has jurisdiction to issue a warrant to arrest for an offence similar to that allowing him to issue a summons for the offence (M.C. Act, 1952, s. 1). See "Summons," above.

If an offence which could be prosecuted on indictment in England or Wales has been committed outside England and

within his county or borough (M.C. Act, 1952, s. 1).

A warrant should contain a statement of the offence with which the accused is charged, and this should be set out in ordinary language. If the offence is one created by or under any written law, there should be a reference to the section of the Statute or Regulation etc. (M.C. Rules, 1952, r. 77).

The doing of the act directed in the warrant is called the execution of the warrant. The directions of a warrant should be strictly observed, otherwise the person executing it may not be justified in his acts. When a constable receives a warrant for execution he should read it over carefully, to see what it orders him to do and to see that the particulars in it are correct. If a mistake is found in a warrant it must not be altered, but the warrant should be returned without delay to the Clerk to the Justices.

A warrant remains valid even *if* the Justice who issued it dies or ceases to hold office (M.C. Act, 1952, s. 101).

A warrant of arrest, commitment, distress or search issued by a justice may be executed anywhere in England and Wales by any person to whom it is directed or by any constable acting within his police area. (M.C. Act 1952, s. 102 and Distress for Rates Act, 1960, s. 4). A warrant to arrest for an offence or a search warrant may be issued and executed on Sunday as on any other day (M.C. Act, 1952, s. 102). Such power of execution by any constable in any place does not extend to warrants issued elsewhere than in England or Wales (Criminal Justice Act, 1925, s. 49 (3)).

A warrant to arrest a person charged with an offence or an in court or a commitment warrant, where the person has gone to Scotland, Isle of Man, the Channel Islands or Ireland, or *vice versa*, may be executed in the place where the person is if it is backed (endorsed) by a local magistrate who can do so if the warrant is accompanied by a sworn statement verifying the band-writing (signature) of the Justice who has issued the warrant (Indictable Offences Act, 1848, ss. 12 to 14, and M.C. Act, 1952, s. 103).



When a constable executing a warrant has it in his possession if asked he should show it and read it to the person concerned

All warrants executed or returned unexecuted should be endorsed by the constable concerned with the date, time and manner of execution, or with the reason for failure to execute or with date of attempt to execute, together with his signature and the date.

**Warrant to Arrest.** Every warrant to arrest should give the offence charged, the authority under which the arrest is made, the person or persons who are to execute it, and the person to be arrested.

A warrant of arrest issued by a justice remains in force until it is executed or withdrawn.

stable although it is not in his possession at the time, but on demand of the prisoner it shall be shown to him as soon as practicable (M.C. Act, 1952, s. 102). In the execution of a felony warrant a constable if refused admission may break doors to effect

the cause of his coming and requested admittance. However, the breaking open of outer doors is so dangerous a proceeding that a constable should not resort to it except on reasonable grounds of suspicion and in extreme cases when an immediate arrest is necessary.

**Warrant to Remand or to Commit.** This warrant directs is to be detained as set forth in the warrant. When the constable delivers such a person at the place, he should hand in the warrant with him and obtain a receipt for the person, which subsequently should be handed in at his police station.

**Warrant to Commit to Prison In Default.** Such a warrant directs that the person be arrested and taken to H.M. Prison

The person should be asked for the amount. If he pays it a receipt should be given him and the warrant should be endorsed with the date and manner of execution.

The constable holding such a warrant of commitment may on the warrant. Such a payment will reduce the period of imprisonment (M.C. Act, 1952, s. 67, M.C. Rules, 1952, r. 45 and Distress for Rates Act, 1960, s. 7). If the person cannot or will not pay, he must be arrested and lodged in prison. Such a warrant should not be executed on a Sunday. If the person is arrested after the prison has closed or cannot be brought to the prison before 10 p.m., he may be lodged in the nearest police station until he can be received into prison.

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**Distress Warrant.** When default *is* made by a person in

levying the sum, or issue a commitment warrant if the distress does not cover the sum or instead of a distress warrant (M.C. Act, 1952. s. 64). Under M.C. Rules. 1952. r. 43. a distress warrant shall be issued to the police requiring them to levy the said sum

The warrant may be executed by any person under the direction of a constable. It will authorise the taking of any money as well as any goods of the person and require the person charged with the execution to pay the sum to be levied to the clerk of the

The wearing apparel or bedding of any person and his family pounds must not be seized. The distress seized shall be sold within such period specified in the warrant not earlier than the 6th day after the making of the distress or if no period is specified within the period beginning on the 6th day and ending on the 14th day after the making of the distress. However the distress may be sold, with the written consent of the person before the beginning of the said period. The distress shall be sold by public auction or in such manner as the person may in writing allow.

until the day of sale.

A conspicuous mark shall be affixed on the articles impounded. The constable charged with the execution of the warrant shall cause the distress to be sold and may deduct out of the proceeds all costs and charges incurred and return to the owner any balance, retaining the sum payable with the proper costs and charges.

The constable executing the warrant shall as soon as practicable send a written account of the costs and charges incurred to the clerk of the court.

If the person pays the sum to the constable or produces a receipt for same from the clerk of the court and also pays the costs and charges incurred, the constable shall not execute the warrant or shall cease to execute as the case may be (M.C. Rules, 1952, r. 43). Any constable holding a warrant of distress or commitment in default of payment may receive a part payment (M.C. Rules 1952. r. 45).

Any person who interferes with the mark or removes the marked goods is liable to fine up to £5, and if any person charged

excess charges or makes any improper charge he is liable to similar fine on summary conviction (M.C. Act, 1952, s. 66).

If there are no goods or no sufficient goods the constable should notify the clerk of the court. The warrant should not be

executed between sunset and sunrise. Premises should not be

rates (Distress for Kates Act, 1960, s. 4).

The court may order a person adjudged to pay a sum by conviction (or on an affiliation order) to be searched and any money so found or found on him when arrested or in prison, in default of payment or want of sufficient distress to satisfy such sum, may be applied towards payment of the sum adjudged, unless the court is satisfied that such money does not belong to him or that the loss of it would be more injurious to his family than his detention (M.C. Act. 1952. s. 68).

**Search Warrant.** A warrant to search usually authorises the person to whom it is addressed and his assistants, to enter, by

place and thing inside, to seize and take away any articles mentioned in the warrant, and to arrest the persons named in the warrant or the persons in whose possession the articles named are found. A search warrant remains in force until executed or when any limitation of time ends. It is usually "executed" when a search has been made, whether the articles named are found or not, but some search warrants authorize entry at any

A search warrant may be granted and executed on Sunday (M.C. Act, 1952, s. 102). The officer should have the warrant in his possession and produce it to be read if required.

Any special directions in a search warrant must be strictly

sworn complaint alleging suspicion that larceny has been committed. It authorises search in any house, etc. in the daytime, and arrest of any person found in possession of the stolen goods.

Reasonable ground of suspicion is necessary before a search warrant is granted, as a Justice will not issue a warrant on bare surmise.

As the constable must strictly observe the directions of the

unless such unnamed articles are likely to furnish evidence of the identity of stolen articles or to substantiate the charge against the accused person.

A search warrant is really a warrant to search for evidence of

A search warrant may be executed anywhere in England and Wales by the person to whom it is directed or by any constable within his area (M.C. Act, 1952, s. 102).

Search warrants may be granted on sworn informations under over fifty Acts of Parliament and in each case the directions given in the Act must be observed. For example :



equal or superior rank, may give a written order to enter at any

or ingredients thereof found therein.

Under section 9 of the Official Secrets Act, 1911. in a case of great emergency, when in the interest of the State immediate action is necessary, a superintendent of police may by written order empower any constable to enter, at any time, any place

place and every person found therein, and to seize anything which is evidence of an offence under the Official Secrets Act.

**Commitment.** Commitment or committal in the legal sense means sending a person to prison or detention or for trial or sentence.

A warrant of commitment shall state the offence or other ground on which the person is committed. It is directed to the police of the area to arrest him and convey him to the place mentioned and to the keeper of the place of detention to keep him in his custody in accordance with the directions in the warrant. The police shall deliver him with the warrant and get the keeper's receipt for the person (M.C. Rules, 1952, r. 74).

be committed to prison. When a person has been convicted summarily and sentenced to imprisonment a commitment warrant

sentence.

A warrant is not necessary in the case of a prisoner sentenced at Assizes or Quarter Sessions.

A committal or commitment to prison warrant may be issued in the case of non-payment of money. See " Warrants."

After the preliminary hearing (or examination) by a justice or justices a person accused of an indictable offence may be committed for trial by a judge, etc., and jury in a higher court. Such " committal for trial " means committed to prison but it also includes a person admitted to bail on recognizance to appear and stand his trial (Interpretation Act, 1889, s. 27).

Any commitment by a justice to any form of detention shall be by a warrant of commitment (M.C. Rules, 1952, r. 71).

The following are examples of commitment:

C.J. Act, 1948, s. 18, sending of person between 14 and 21 to S. 27, sending person under

21 to remand home or remand centre for trial or sentence. See Chap. 12.

S. 75, sending young person (14-17) to a remand centre for inquiry into his mental or physical condition. See Chap. 12.

M.C. Act, 1952, s. 28, committing person (16-21) to Quarter Sessions for sentence to Borstal. See Chap. 28.

S. 29, committing person not less than 17 to Quarter Sessions for sentence. See Chap. 4.

S. 69, commitment (or non-payment of a sum adjudged to be paid by a conviction).

C. and Y.P. Act, 1952, s. 3, sending a child under 12 to a special reception centre. See Chap. 12.

Detention by Police. Under the M.C. Act, 1952, a magistrates' court may order the detention of persons in police premises as follows:

Detention up to 4 days in police cells, etc., certified for the purpose by the Secretary of State instead of any imprisonment which the court has power to impose (s. 1(19). This must be by warrant of commitment (M.C. Rules, 1952, r. 71).

Detention up to 8 P.M. in the evening of the day on which the order is made, in a police station or court-house where the court has power to commit to prison a person convicted of an offence, but the order must not deprive the offender of a reasonable opportunity of returning to his abode on that day (s. 110). Such an order shall be in writing (M.C. Rules, 1952, r. 27).

Detention by warrant in a police station when the court has power to commit a person to prison in default of payment of a sum adjudged to be paid by a summary conviction.

This warrant, unless the sum is sooner paid, shall authorise any police constable to arrest the defaulter and take him to a police station where the officer in charge shall detain him until 8 A.M. in the morning of the day following that on which he is arrested, or if he is arrested between midnight and 8 A.M. in the morning until 8 A.M. in the morning of the day on which he was arrested. Provided that the officer may release him at any time within 4 hours before 8 A.M. in the morning if the officer thinks it is expedient to do so in order to enable him to go to his work or for any other reason appearing to the officer to be sufficient (s. 111).

If imprisonment for default of payment or sufficient distress is reduced by part payment to less than 5 days, the person may be committed either to prison or to a certified place (under s. 109 above) or if reduced to one day he may be detained in the court-house (under s. 110 above) (M.C. Rules, 1952, r. 45.)

If a magistrates' court has power to remand a person in custody, if the remand does not exceed 3 days, it may commit him to the custody of a constable (M.C. Act, 1952, s. 105).

which a person acknowledges that he owes the Crown a certain  
sum of money if the condition or conditions specified in  
the

recognizance are not carried out.

A person may be ordered to enter into a recognizance with  
or without sureties.

The recognizances of sureties may be taken separately and

before or after the recognizance of the principal (C. J.A. Act, 1914, s. 24).

If sureties are required, the person who enters into the recognizance (the principal) and the sureties are liable to pay the amounts specified if the condition prescribed is not fulfilled.

Recognizances may be required for several purposes, such as to keep the peace or to be of good behaviour, to prosecute a particular person, to pursue an appeal, to appear and give evidence, to surrender to a court or when placed on probation.

If a surety makes complaint in writing and on oath to a justice for any county or borough that his principal has broken or is about to break the conditions of his recognizance to keep the peace or be of good behaviour, the justice if the principal is in such area or the recognizance was entered before a magistrates' court of such area, may issue a warrant to arrest the principal and bring him before a magistrates' court. If such complaint is not on oath the justice may issue a summons. (M.C. Act, 1952. s. 92).

If a recognizance to keep the peace or be of good behaviour

with a proceeding before the court appears to be forfeited, the court may declare it forfeited and adjudge the persons bound to pay the amounts or parts of them. Payment may be enforced as if the sum was a fine on summary conviction. However if the recognizance was to keep the peace or be of good behaviour, the court shall not declare it forfeited except by order made on complaint (M.C. Act, 1952. s. 96). See Chap. 22.

Breach of recognizance is not an offence so there is no appeal against the forfeiting of a recognizance (*fl. v. Durham Justices, Ex parte Laurent*, (1944)). Criminal Justice Act, 1948, ss. 14, 15,

and forfeited recognizances.

A magistrates' court may fix the amounts of any recognizance which later may be taken by any justice or the clerk of any

or the officer in charge of any police station or the governor or keeper of the prison or place in which the person is detained.

A certificate from the clerk of the court giving particulars of the recognizance should be produced to any such person before he takes the recognizance and the recognizance should be sent to the clerk of the court (M.C. Act, 1952, s. 95, M.C. Rules, 1952, r. 68).

**Bail.** Bail is a recognizance or bond taken by a duly authorised person to ensure the appearance of an accused person at an appointed place and time to answer to the charge made against him. See also "Recognizance." above.

It is based on the principle that an accused person should not be kept unnecessarily in custody, so whenever it is possible and

can with safety be done, an untried prisoner should be released

Bail may be granted by a Court, by a Justice, and in some cases, as provided by Statute, by the officer in charge of a police station.

A person charged with treason shall not be admitted to bail except by order of a Judge of the High Court or the Secretary of State (M.C. Act, 1952, s. 8).

The object of bail being to secure the attendance of an accused person at the trial, the following points should be considered before bail is allowed :

- (1) The probability of accused's appearance at the trial.
- (2) The nature and gravity of the charge.
- (3) The nature and weight of evidence in support of the charge.
- (4) The sufficiency of the sureties, if sureties are required.

A prisoner may be released on his own recognizance, or one or more sureties may be required in addition to his own bond. Such sureties are termed his bails or bailsmen, and they are responsible, in the amounts fixed, for the prisoner's attendance in court.

The amount of bail is discretionary and will depend on the nature of the charge and the quality of the prisoner. It is illegal to require excessive bail. Usually two householders are accepted as bails, provided the Justice or police officer is satisfied of their ability to answer the sums in which they are bound. Bail can be found after a Court has risen. See " Recognizance " above.

A bail recognizance may be conditioned for the appearance of the person at every hearing during the course of the proceedings, (M.C. Act, 1952, s. 105). This is termed " continuous bail ".

If a person charged with or convicted of an offence is released on bail to appear before a summary court and fails to appear, the court may issue a warrant for his arrest (M.C. Act, 1952, s. 97).

A person bailed to appear is by law in the custody of his sureties, and they may arrest him either with or without warrant if they fear his escape, and bring him before a Magistrate, thereby

If a person on bail fails to appear before the court the recognizance may be forfeited or estreated, and he and his sureties may be adjudged to pay the amounts in which they were bound (M.C. Act, 1952, s. 96 and see "Recognizance," above).

The officer in charge of a police station has power to admit to bail prisoners arrested without warrant, and he must, unless there are grave reasons to the contrary, admit to bail prisoners under seventeen years of age.

Bail by Police. Certain Statute\* authorise the police to admit prisoners to bail as follows :



Persons arrested without warrant. When a person is arrested without warrant and brought to a police station a police officer not below the rank of inspector or the officer in charge of the station may, and if it will not be practicable to bring him before a summary court within 24 hours of the arrest, will inquire into the case and, unless the offence appears to be a serious one, release him on his entering into a recognizance with or without sureties, for a reasonable amount, to appear before a summary court at a named time and place (this does

If the inquiry into the case cannot be completed forthwith without sureties for a reasonable amount, to appear at the police station at a fixed time unless he receives written notice that his attendance is not required. If the prisoner appears to be under 17, the recognizance conditioned for his appearance at the police station may be taken from his parent or guardian with or without sureties.

If such a prisoner is kept in custody he shall be brought before

(2) Persons arrested without warrant for offences

without sureties to attend the hearing of the charge unless his release would tend to defeat the ends of justice or to cause injury or danger to the child or young person against whom the offence is alleged to have been committed (C. and Y.P. Act, 1933, s. 13). See "Cruelty to Children and Young Persons," Chap. 12.

(3) Prisoners under seventeen years of age. When a person apparently under seventeen is arrested with or without warrant and cannot be brought forthwith before a summary

Chap. 12, and see above as regards a recognizance to appear at a police station.

(4) Persons arrested on warrant. If the warrant to arrest has been endorsed by the Justice issuing it with his consent to the prisoner, when arrested, being released on bail, the prisoner, when brought to a police station, should be released on bail in accordance with the directions in the endorsement

(5) Persons arrested without warrant In County Boroughs. Any idle or disorderly person found disturbing the public peace or suspected on just cause of intention to commit a felony, may be arrested by a county borough constable and brought to a police station. Such a prisoner may, if it is thought fit, be released on bail to appear before a Justice

(Municipal Corporations Act, 1882, ss. 193 and Police Act, 1946).

**Remand.** Remand is the process of adjourning the hearing of the case against a person and taking precautions to ensure his presence at a future hearing.

A remand is therefore an adjournment under which the Court puts back the person in custody or upon recognizance.

The M.C. Act, 1952, deals with remand as follows:

A magistrates' court may, before inquiring into an offence as examining justices or at any time during the inquiry adjourn the hearing and, if it does so, shall remand the accused (s. 6).

The court may at any time adjourn the trial of an information. The court, after convicting the accused and before sentence, may adjourn the case (up to three weeks at a time) for inquiries to be made or to decide the best method of dealing with it.

On adjourning a trial the court may remand the accused and

able one or an indictable offence being tried summarily (s. 14).

If, on the trial by a magistrates' court of an offence punishable on summary conviction with imprisonment, the court is satisfied that the accused did the act or made the omission charged but considers inquiry should be made into his mental or physical condition it shall adjourn the case (up to three weeks at a time) so that the accused may be medically examined and remand him for that purpose as laid down in the section (s. 26 as amended by Sch. 7 of the Mental Health Act, 1959).

A court may at any time adjourn the hearing of a complaint and remand the defendant (ss. 46, 47). A court, at common law, may adjourn for a reasonable time on reasonable grounds.

Where an accused has been convicted by a magistrates' court and the trial has been adjourned before sentence is given, he may be sentenced by a later court provided that if the later court is not composed of the same justices it must inquire into the facts and circumstances of the case before sentencing him (s. 98).

Where a magistrates' court has power to remand any person it may commit him to custody (prison or other detention, s. 126) or remand him on bail usually for eight clear days but it may be for longer periods as provided in the section, and if the remand in custody is for not more than three days it may commit him to the custody of a constable (s. 105).

S. 106 deals with further remands and also allows a court to further remand a person remanded to appear or be brought to court but unable to do so by reason of illness or accident, or to enlarge the recognizance of a person on bail in his absence.

"Clear days" means complete intervening days, excluding the day of remand and the day of appearing in court.

For remand of persons under 21 see "Treatment of Youthful

A summary court may adjourn the hearing of an information or complaint and fix a time for its resumption or, if it does not remand the accused or the defendant, it may leave the resumption to be decided later by the court (viz. adjournment *sine die*) (M.C. Act, 1952, ss. 14 and 46).

**Acquittal.** When a person has been tried by a judge and jury for an indictable offence and the jury return a general verdict of "Not guilty," the prisoner is thereby acquitted or freed from the accusation and must be at once discharged, unless there is some other charge against him.

If his discharge was the result of some defect in the proceedings (e.g. the indictment was not sufficient so that he had not been in danger upon it), he may be detained and prosecuted afresh.

It is a rule at Common Law that a man may not be put twice in peril for the same offence. If a person is legally acquitted of an offence, he should not again be prosecuted for that offence.

If such a person is again prosecuted for the same offence he may, when asked to plead or reply to the charge against him, make the special plea of *autrefois acquit*, that is, that he had previously been acquitted of the same offence. If he effectively makes out this plea he will be discharged.

The fact that a person accused of an indictable offence has been discharged by the Court does not prevent his re-arrest, subsequent prosecution and conviction, if he had not been in danger of conviction on the first occasion.

If a person accused of an indictable offence is discharged by the examining Justices under s. 7 of the M.C. Act, 1952, he can again be brought before them if more evidence is forthcoming.

If a case has been tried on its merits and dismissed, the dismissal is a bar to subsequent proceedings for the same offence as the defendant was in danger and was acquitted.

Where on summary trial, under the provisions of the Act, of an offence which otherwise would have been punishable on indictment only, the court dismisses the information, this is equal to acquittal on indictment (M.C. Act, 1952, s. 22).

If the Justices dismiss a charge of assault under ss. 42 or 43 after a hearing upon the merits, they shall, if requested, give the defendant a certificate of dismissal which is a release from all further proceedings, civil or criminal, for the same cause (Offences against the Person Act, 1861, ss. 44 and 45).

**Appeal.** Under the Magistrates' Courts Act, 1952, and Rules a person convicted by a magistrates' court may appeal to Quarter Sessions:

- (1) If he pleaded guilty against the sentence;
- (2) If he did not plead guilty against the conviction or sentence;

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- (3) If sentenced for the offence in respect of which he was *previously* put on probation or conditionally discharged against the sentence.

In such cases " sentence " includes any order made on conviction by a summary court except:

- (a) a probation order or an order for conditional discharge (see Chap. 28);
- (6) an order for payment of costs;
- (e) an order for the destruction of an animal under s. 2, Protection of Animals Act, 1911, or;
- (d) an order made under any enactment which allows the court no discretion as to its making or terms (s. 83).

An appellant should give written notice of appeal (stating the grounds, M.C. Rule 59) within 14 days to the clerk of the summary court and to the other party. An extension of time may be allowed by Quarter Sessions on application to the Clerk of the Peace (s. 84). Such a notice can be sent by registered post to any

An appellant may abandon his appeal by giving notice in writing or by registered letter (M.C. Rules. 1952, r. 60), not later than the third day before the hearing, to the clerk of the summary court, and he may be ordered to pay costs (s. 85). Where appellant has given notice to abandon his appeal, any recognizances binding him to appear at the hearing of the appeal shall have effect to enforce his appearances before the summary court at a time and place to be notified to him by the clerk of the court (M.C.

If the appellant is in custody, the summary court may release him on recognizance to appear at the hearing of the appeal, except in the case of committal to Quarter Sessions, under ss. 28 (Borstal) or s. 29 (for sentence on conviction for indictable offence (s. 89)).

There is an appeal to Quarter Sessions against an order binding over to be of good behaviour under 34 Edward III. See " Surety for Good Behaviour," Chap. 22.

There is no right of appeal to Quarter Sessions against the dismissal of a case except in bastardy cases (M.C. Act, 1952, s. 83) and excise cases (Customs and Excise Act, 1952, s. 283) but application may be made for case stated (see later).

The Summary Jurisdiction (Appeals) Act, 1933 deals with appeals from a summary court to Quarter Sessions. When notice to appeal has been given both parties, if poor, may be granted " Appeal Aid .Certificates " entitling them to free legal aid (s. 2).

The decision of Quarter Sessions on an appeal against conviction or sentence is final on all points of fact but on a point of law the court may state a special case for the opinion of the Queen's Bench Division (C.J. Act, 1925, s. 20).

The C.J. Act, 1948, s. 37 gives the High Court power to grant bail to persons in custody who have appealed or asked for case stated or applied for an order of certiorari.

A person convicted on indictment or on Coroner's inquisition or at Quarter Sessions as an incorrigible rogue (see Chap. 27)

leave against the sentence, subject to the provisions of the

Under the Administration of Justice Act, 1960, an appeal shall lie to the House of Lords, at the instance of the defendant or prosecutor (a) from any decision of a Divisional Court of the Queen's Bench Division in a criminal cause or matter, (b) from

court. No appeal shall lie except with the leave of the court

unless it is certified by the court below that a point of law of general public importance is involved. See *R. v. Rumping* (1962), where the Court of Criminal Appeal dismissed Rumping's appeal against his conviction for murder, but certified that a point of

whether a letter written by Rumping to his wife, which was never

dismissed.

Case stated. Under the M.C. Act, 1952 ss. 87 to 90 and Rules, 1952, 61 to 64, any person who was a party to any proceeding -  
diction, see *Boulter v. Kent Justices* (1897) or is aggrieved by the

may question it on the ground that it is wrong in law (a point of law of some substance) or is in excess of jurisdiction by applying within 14 days (in writing to the clerk of the court Rule 61) to the court to state a case for the opinion of the High Court on the question of law or jurisdiction involved.

He cannot do so if it is a decision against which he has a right (s. 87).

(Rule 63).

If the justices consider the application is frivolous they may refuse to state a case and certify accordingly, and the High Court may make an order of mandamus requiring them to state a case.

to state a case. If the application to state a case is in respect of a

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decision any right of the applicant to appeal to Quarter Sessions

The justices need not state a case until the applicant has the matter without delay and submit to the judgment of the High Court and pay any costs awarded (s. 90). If the applicant is in custody the summary court may release him on recognizance, with or without sureties, to appear before the magistrates' court within 10 days after the judgment of the High Court, unless the decision has been reversed, but a person committed in custody under ss. 28 or 29 cannot be so released (s. 89).

recognizance (C.J. Act. 1948, s. 37).

The Queen's Bench Division will hear and determine the question and except as provided by the Administration of Justice Act, 1960, its decision shall be final (S.J. Act, 1857, s. 6).

A case may be stated on behalf of the justices whose decision justices have no power to state a case, it can only be done by a

Certiorari and Mandamus. Certiorari is the name of an order of the Queen's Bench Division directing that the proceedings

Bench Division to be there examined and if necessary quashed.

This order may be granted on proof that there has been some difficult point of law is likely to arise on the trial, or that a fair and impartial trial cannot be had in the Court below, or that a conviction has been obtained fraudulently, etc., etc.

If the applicant is in custody, the High Court may release him Act, 1948, s. 37 (1)).

and if the Queen's Bench Division thinks fit. the order of certiorari has power to vary sentence on certiorari (Administration of

If a Justice (or Justices) does not perform any duty laid upon him, application by affidavit may be made to the Queen's Bench Division asking for leave to apply for an order of mandamus. If leave is granted the application is made after notice has been

may grant an order of mandamus, i.e. an order requiring the Justice or Justices to perform the duty.

Habeas Corpus. This is the name given to a writ or order of another in custody, directing him to produce the body (corpus) of the prisoner and show the cause of his detention.

It came into existence as a remedy against illegal detention or undue detention without trial. A prisoner should be tried as soon as possible and must not be kept unduly in prison untried.

A writ of habeas corpus may now be used to investigate any alleged illegal action of Justices regarding an untried prisoner.

at any place in the interests of justice or for any public inquiry or where such a person requires treatment in hospital, etc., the Secretary of State may direct him to be taken there (Prison Act,

The procedure on application for habeas corpus and appeal in habeas corpus proceedings are dealt with by the Administration of Justice Act, 1960 (ss. 14 and 15).

Limitation of Proceedings. The general principle is that

definite time limit is fixed by Statute and after the prescribed period has elapsed no proceedings may be taken.

*Indictable offences.* There is, at Common Law, no limit of time within which a prosecution for an offence must be com-

unless some Act of Parliament or legal rule prevents such action. In the majority of indictable offences there is no such time limit.

*Summary Offences.* Under s. 104, M.C. Act, 1952, except as otherwise expressly provided by any enactment a magistrates'

not restrict any power to try summarily an indictable offence under ss. 19, 20 or 21 of this Act, or under any enactment under which an indictable offence may be tried summarily with the consent of the accused nor would it apply to a continuing offence.

Sunday Process. Sunday Observance Act, 1677, a. 6, directs that no person upon the Lord's Day shall serve or execute any writ, process, warrant, order, judgment or decree (except in cases of treason, felony or breach of the peace) but the service of

or order of a summary court other than a warrant of arrestment (Summary Jurisdiction (Process) Act, 1881, s. 8). However the

charged with an offence or of a search warrant shall be as effectual on Sunday as on any other day (M.C. Act, 1952, s. 102).

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A police notice prior to proceedings to be taken would not appear to be "process" and therefore might be served on Sunday.

Costs In Criminal Cases Act, 1952. This Act has repealed the similar Act of 1908 and sections of other Acts which dealt with costs in criminal cases and purport to deal with all such costs.

able cases out of local funds-by order of Assizes, Quarter Sessions, Magistrates' Courts and examining justices.

able costs of the prosecution and if accused is acquitted the costs of the defence or compensation for any witness (a. 1).

him to pay the costs of the prosecution but if he is acquitted on

defence if accused has not been in custody or bound by recognizance or if it is an offence under the Merchandise Marks Acts or a private prosecution for libel or corrupt election practice (s. 2).

Ss. 3 and 4 (as amended by the 3rd Schedule of the Administration of Justice Act, 1960) deal with the costs which may be awarded by the Court of Criminal Appeal and the House of Lords.

Magistrates dealing summarily with an indictable offence or inquiring as examining justices may order payment of the costs of the prosecution. If they dismiss such a case they may order payment of the costs of the defence or compensation to any

On summary trial of an information a magistrates' court may order payment of costs on conviction to be paid by accused to the prosecution but on dismissal of the case may order the costs to be paid by the prosecution to the accused. Only actual costs may be ordered; if an amount in excess is ordered it would be a penalty (*R. v. Higkote Justices* (1954)).

charge was not made in good faith they may order the prosecution to pay the costs of the defence, but if the amount of such costs exceeds £25 the prosecutor may appeal to Quarter Sessions (g. 6).

1962 deal with the allowances payable to witnesses in criminal cases.

Director of Public Prosecutions. The Director is the head of a legal Department in London. He is appointed under the Prosecution of Offences Act, 1908, and it is his duty, under the superintendence of the Attorney-General, to carry on such criminal proceedings and to give such advice and assistance to Chief

in criminal proceedings as may be prescribed by regulations or M



directed in any special case by the Attorney-General. Such regulations provide for the Director taking action in cases of importance or difficulty or which by statute require his action. He can undertake at any stage the conduct of any Criminal proceedings (s. 3). Normally he appears for the Crown in cases under the Criminal Appeal Act, 1907. The Regulations of 1946 are given in Appendix III at the end of the book.

**Legal Aid and Advice Acts, 1949 and 1960** Legal aid by solicitor and counsel may be given to a person who has reasonable grounds for taking, defending, etc., law proceedings in cases not

not exceed £700 per annum (1949 Act, s. 2 and 1960 Act, s. 1) and he may be required to contribute to the cost (1949 Act, s. 3). Such person may select his legal aid from a local panel of lawyers (s. 6).

In criminal proceedings where there is a right to free legal aid under older Acts, there is no prescribed income limit but if there is a doubt as to a person's sufficient means or as to the desirability of his having legal aid, he should be granted it (s. 18).

Application for free legal aid under the Poor Prisoner's Defence Act, 1930 (see " Accused or Defendant " above), may be made by letter to the clerk to the justices and a justice may grant a legal aid certificate (s. 19).

Making a false written statement to obtain legal aid will be a summary offence (s. 18).

## Chapter VI

### RECORD OF EVIDENCE

#### Contents

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Statements by Persons suspected of Crime or by Prisoners In Police Custody. In 1918 the Judges of the King's Bench Division approved a memorandum on the above subject, containing rules for the guidance of the police.

These rules were drawn up to ensure that any statement tendered in evidence should be a purely voluntary statement and therefore admissible in evidence. They explain the conditions under which the Courts would be likely to admit in evidence statements made by persons suspected of or charged with crime. They are not rules of law (see *R. v. Voisin* (1918), and *R. v. Wattam* (1952)) but are for the guidance of the police.

These rules are to the following effect :

#### **Persons suspected of crime.**

(1) When a police officer is endeavouring to discover the author of a crime, there is no objection to his putting questions in respect thereof to any person or persons, whether suspected or not, from whom he thinks that useful information can be obtained.

(2) Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking any questions or any further questions, as the case may be.

#### **Prisoners.**

(3) Persons in custody should not be questioned without the usual caution being first administered.

NOTE. This rule was never intended to encourage or authorise the questioning or cross-examination of a person in custody after he has been cautioned, on the subject of the crime for which he is in custody.

But in some cases it may be proper and necessary to put questions to a person in custody after the caution has been

administered, for instance, a person arrested for a burglary may, before he is formally charged, say " I have hidden or thrown the property away," and after caution he would properly be asked " Where have you hidden or thrown it ? " ; or a person, before he is formally charged as a habitual (persistent) criminal, is properly asked to give an account of what he has done since he last came out of prison.

*Prima facie* the expression " persons in custody " in this Rule (3) applies to persons arrested before they are confined in a police station or prison, but this rule equally applies to prisoners in the custody of the gaoler.

(4) If the prisoner wishes to volunteer any statement, the usual caution should be administered.

It is desirable that the last two words of the usual caution should be omitted, and that the caution should end with the words " be given in evidence."

(5) The caution to be administered to a prisoner, when he is *formally* charged, should therefore be in the following word\* : " Do you wish to say anything in answer to the charge ? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."

Care should be taken to avoid any suggestion that his answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might assist to clear him of the charge.

NOTE. With regard to the form of the caution it is obvious that the words in this Rule (5) are only applicable when the formal charge is made and can have no application when a violent or resisting prisoner is being taken to a police station. In any case before the formal charge is made, the usual caution is, or should be, " You are not obliged to say anything, but anything you say may be given in evidence."

This simple, emphatic and easily intelligible form of caution may be used at any time during the investigation of a crime at which it is necessary or right to administer a caution. For example, when a person is being questioned by a police officer under Rule (1) and a point is reached when the officer would not allow that person to depart until further inquiry has been made and any suspicion<sup>1</sup> that may have been aroused had been cleared up, it is desirable that such a caution should be given before further questions are asked. When any form of restraint is actually imposed, such a caution should be given before further questions are asked.

When it comes to cautioning a prisoner immediately before or immediately after he is formally charged, the form prescribed in this Rule (5) should be used.

(6) A statement made by a prisoner before there is time to caution him is not rendered inadmissible in evidence merely

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by reason of no caution having been given, but in such a case he should be cautioned as soon as possible.

(7) A prisoner making a voluntary statement must not be cross-examined, and no questions should be put to him about it except for the purpose of removing ambiguity in what he has actually said. For instance, if he has mentioned an hour

without saying whether it was morning or evening, or has given a day of the week and day of the month which do not agree, or has not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point.

(8) When two or more persons are charged with the same offence and statements are taken separately from the persons charged, the police should not read these statements to the other persons charged, but each of such persons should be

furnished by the police with a copy of such statements and nothing should be said or done by the police to invite a reply. If the person charged desires to make a statement in reply, the usual caution should be administered. (This rule should

be carefully followed.) (See *K. v. Mills and Lemon* (1947)).

NOTE. For the purpose of these Rules the words " crime " and " offence " are synonymous and include any offence for which a person may be apprehended or detained in custody.

(9) Any statement made in accordance with the above rules should, whenever possible, be taken down in writing and signed by the person making it after it has been read to him and he has been invited to make any corrections he may wish.

any statement was made or taken down in writing, a police officer must be absolutely frank in describing to the Court exactly what occurred, and it will then be for the Court to decide whether or not the statement tendered should be

Admissions and Confessions. A person summoned to a magistrates' court may in certain cases write pleading guilty and not attend (see " Proceedings before Justices," Chap. 4. *ante*). An admission made by a party in a case or made on his behalf is a disclosure of or an agreement with some fact which bore or less

writing or by mere silent conduct. If a statement is made in the

A confession is a statement made by a person charged with a crime admitting that he committed the crime. A confession is an admission, but an admission may not amount to a confession of guilt.

sible in evidence, must be free and voluntary. It is the duty

of the prosecution to prove that any confession produced in evidence has been given voluntarily.

If there has been any inducement or constraint from any person in authority over the accused, his resulting confession will not be admitted in evidence as it cannot be regarded as free and voluntary.

A police officer is a person in authority over a prisoner and he must be most careful in his conduct towards the prisoner so that he may be able to prove affirmatively that he held out no inducement or threat towards a prisoner who has made a confession or admission of any kind. An inducement or threat held out to a prisoner by a person not in authority over him does not prevent the giving in evidence of a resulting confession.

inducement or threat, to a police officer by a prisoner, is admissible. A statement he should be cautioned that he is not obliged to say anything, but whatever he says will be taken down in writing

must be carefully observed. A prisoner's replies to questions in the circumstances of the case must be taken into account and a police officer should not question his prisoner unless he can show

facts.

Where a statement or complaint or charge is made in the presence of a person accusing him of a crime, his behaviour on the occasion may be given in evidence so that the jury may decide whether or not, at that time, he accepted or admitted the statement made against him.

Such a statement or charge is not evidence of the acts alleged therein, but the conduct of the accused when the statement was made may be equivalent to an admission of its correctness.

wish to say anything or he may remain silent.

in evidence, yet anything discovered in consequence of what was stated in the confession will be admitted in evidence. Thus the finding of stolen goods as the result of an inadmissible confession

**Dying Declaration.** A dying declaration is a statement made by a person who has been injured and who is dying, which caused his injuries. It should give in the actual words of the injured person what has happened to him ; it should contain

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his opinion that he is dying and has no hope of recovery ; need not be on oath ; it may be signed by the injured person if he is able to sign it ; the person charged with causing the injuries need not be present, though he may be ; and the injured person taking it should sign and date it and get it signed also by all the persons (if any) who have heard it being made by the injured person.

Any person may take a dying declaration.

The injured person should not be sworn, as it is not necessary that a person in such a serious position will feel bound to tell the truth.

There is no particular form of dying declaration, and if questions are put to the injured person the questions as well as the answers should be written down and will form part of the declaration.

If the person accused of causing the injuries be present, the injured person should be given the opportunity of cross-examining him.

Dying declarations are admissible in evidence in cases where the death of the deceased person is the subject of the charge, that is in trials for murder or manslaughter.

must be satisfied :

(1) That at the time it was made the declarant was in actual danger of death.

(2) That he then realised his condition and had no hope of recovery.

(3) of the dying declaration.

However, if the accused person is available, and if it is not possible, a Magistrate should be procured so that a deposition can be taken.

**Deposition.** A deposition is a statement made on oath before a Justice, taken down in writing in the presence and hearing of the accused, and read over to the deponent or person making it, and by the Justice. It must be stated in the deposition that it was taken in the presence and hearing of the accused and he must be given an opportunity of cross-examining the deponent. It ought to be signed by the deponent.

When examining justices are inquiring into an offence evidence of each witness shall be taken down in writing in the form of a deposition and read over to the accused (M.C. Kilbride, 1952, T. 5).

A deposition is a record of the evidence which a witness can give in a case and it should state in the words of the witness what the witness can testify. It is written down by the Magistrate.

Court where the trial of the accused person is to take place.

Persons committed for trial by a higher court are entitled to apply for and get copies of the depositions and if the information is in writing, of the information on reasonable payment (M.C. Rules, 1952, r. 13).

A person who thus makes a deposition in a case which is sent forward for trial by jury, is bound over by recognizance to attend and give evidence.

However, if the examining justices consider that the attendance of any witness at the trial is unnecessary by reason of any statement by the accused or plea of guilty by the accused or because his evidence is merely of a formal nature, they may bind him over to attend conditionally upon notice given to him and not otherwise. Such witness need not attend unless he gets notice to

If a witness is dead or insane or too ill to travel, or kept away by the defence, or if his attendance is declared unnecessary by the Justices, his deposition may be read in evidence if the conditions of the section are satisfied (C.J. Act, 1925, s. 13).

#### Taking of Depositions of Persons dangerously ill.

Where a person is able and willing to give material information relating to an indictable offence or to anyone accused of an indictable offence, if a justice is satisfied by medical evidence that such person is dangerously ill and unlikely to recover and it is not practicable for examining justices to take his evidence in the normal manner, the justice may take in writing the deposition of the sick person on oath. Such a deposition may be given in evidence before examining justices and on the trial of the offender subject to the conditions laid down in s. 6 of the Criminal Law Amendment Act, 1867 (M.C. Act, 1952, s. 41).

The justice shall give reasonable notice of such taking to the person against whom it is to be used and allow full cross examination of the deponent. He shall sign the deposition and add a statement as to his reason for taking it, the day when and the place where it was taken and the names of any persons present when it was taken (M.C. Rules, 1952, r. 29).

The conditions prescribed by s. 6 of the C.L. Amendment Act, 1867.. are that before being given in evidence the following must be complied with:

- (a) Proof that the deponent is dead or that there is no reasonable probability that he will ever be able to travel or to give evidence;
- (b) The deposition purports to be signed by the justice by or before it purports to have been taken;
- (c) Proof that reasonable notice (in writing) of the intention to take such deposition had been given to the person against whom it was proposed to be read in evidence and that such person or his lawyer had, if present, full opportunity of cross-examining the deponent. S. 7 of this Act provides for

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t<sup>^</sup> att«ndance of the accused when he is in custody at the  
tune.

As fop<sup>1^</sup> a deposition taken from an injured child or young  
person «\* " Arrest, Search Warrant and Procedure," Chap. 12.

The ^twill apply in the case of a person seriously injured  
by and where njs stoly should be placed on legal record as soon  
as possible. It also applies in the case of a necessary witness in an  
indictable case who is dangerously ill.

In sfwtsses a statement should be taken from the person,  
his doCtt<sup>f</sup> should be interviewed and the facts laid before the  
clerk to UK justice so that he and a justice should come and take the  
dep<sup>a</sup>.

If tb<sup>e</sup> tfted person thinks he is going to die, and there is no  
hope o'®\* recovery, his " dying declaration " should be taken,

See " D<sup>l</sup>g Declaration," above.



## Chapter VII

## EVIDENCE

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Evidence. The word evidence means that which makes evident or manifest or which supplies proof. In law the term " evidence " is used to indicate the means by which any fact or point in issue or question may be proved or disproved in a manner complying with the legal rules governing the subject.

A Court holds a judicial inquiry to ascertain whether a person U or is not guilty of some offence. The burden or task of proving that the accused is guilty rests on the prosecutor or person who assert\* that he is guilty, as the law presumes a man to be innocent until the contrary is proved (*Woolmington v. Director of Public Prosecutions* (1935)). See "Onus of Proof." later.

The prosecutor, therefore, has to produce evidence, viz. a witness or witnesses who on oath relate the facts of the case and (or) produce any things necessary for that purpose. The accused person on his part may also tender witnesses to exonerate him from the charge and to prove that he had previously born\* a good character. This tendering of evidence and the nature of the evidence so given are subject to legal rules, the rules of

evidence. The object of these rules in criminal cases is to elicit the truth without causing undue prejudice to the prisoner.

To prove a particular fact the evidence must be **competent**, that is, it must be fit and appropriate proof of the fact alleged, and it should be **satisfactory**, that is, it must be sufficient to satisfy the Court beyond reasonable doubt. Facts are proved

**credibility of a witness** depends on his knowledge of the facts, his impartiality, and his truthfulness.

When a witness comes before the Court to give evidence he is sworn to tell the truth, the whole truth, and nothing but the truth. Under the guidance of the party by whom he is called he gives his evidence and this is called his **examination** in chief. When this is finished he may be questioned or **cross-examined** by the opposing party, and when this is concluded, he may be **re-examined** by the side which has produced him to give evi

questions.

**Oath or Affirmation.** At Common Law the evidence of a witness was not admissible unless he had been sworn to tell the truth. Evidence given before a magistrates' court shall be given on oath except where unsworn evidence is authorised by law (M.C. Act, 1952, s. 78). The Oaths Act, 1909, prescribes the present form of oath. If a witness objects to being sworn on the grounds that the taking of an oath is contrary to his religious belief or that he has no religious belief, he may make a solemn affirmation, declaring that the evidence he is about to give is the truth (Oaths Act, 1888). An affirmation instead of an oath may be made

delay to administer an oath in the manner appropriate to a person's religious beliefs (Oaths Act, 1961). Christians are sworn on the New Testament, with their hats off. Jews are sworn on the

the Koran. The general rule is that a witness may claim to be sworn in the manner prescribed by his religion or national law, and the oath should be such as the witness considers binding on his conscience, but if a witness objects to being sworn his solemn affirmation will be accepted. A child of tender years need not be sworn in offence cases (C. and Y.P. Act, 1933, s. 38). See "Children," Chap. 12.

«f one witness may be sufficient to convict an accused person.

In a case of perjury the accused may not be convicted solely alleged to be false. See "Perjury," Chap. 21.

In certain other cases as given below, corroboration of the evidence of only one witness is necessary before conviction.

Corroborative evidence means other independent evidence tending to support the truthfulness and accuracy of evidence already given. Corroborative evidence of one witness by other evidence connecting the accused with the offence is required by law in cases of perjury, procurement, of the unsworn evidence

exceeding a speed limit merely on the opinion of one witness as to the rate of speed. See also Chap. 10 as to corroboration in sexual offence cases.

Also in practice, the evidence of the injured party in sexual cases (*R. v. Freebody* (1935)) and the evidence of an accomplice (*R. v. Baskerville*, (1916)) should be corroborated, but the jury after warning by the Judge may convict without corroboration.

Evidence for the prosecution may be given by the prosecutor and any witnesses he may produce, but the wife of the accused cannot be required to give evidence for the prosecution except

The husband or wife of the prosecutor is a competent witness for the prosecution or for the defence.

A confession of guilt which is proved to have been freely and voluntarily made by the defendant to anyone, may be given in evidence. See "Admissions and Confessions," Chap. 6.

Accused persons and their husbands or wives are entitled

to give evidence, and should be told by the Court that he has a right to give evidence on his own behalf. He should not be called as a witness except on his own application. If he does not give evidence his failure to do so must not be commented on by the prosecution. He is not obliged to provide evidence against himself.

An accused person who does give sworn evidence may be asked (1) questions which tend to criminate him) as to the offence charged against him. but he may not be questioned as to any other offence he may have committed

(2) if the prosecution has questioned the good character of the accused or the defence has questioned the prosecution witnesses with a view to establish the good character of the accused or the defence has attacked the character of the prosecutor or of the witnesses for the prosecution, (see *R. v. Clark* (1955)) or unless (2) the fact that he has committed such other offence

or unless (3) he has given evidence against another person charged with the same offence. In any of these exceptions he may be asked any relevant question.

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regarding the cross-examination as to his credit of an accused person who has given evidence.)

Generally speaking the wife or husband of the accused may not be called as a witness unless on accused's consent and application, provided that in the following cases the wife or husband of the accused may be called as a witness for the prosecution or for the defence and without the consent of the accused.

(1) By statute, in cases of rape, indecent assault, procuration, incest, bigamy, cruelty to children, indecent conduct towards young children, etc., as given by s. 4 and the Schedule to the

these statutes the husband or wife is competent to give evidence if willing to do so but is not compellable (*Leach v. K.* (1912)).

(2) At common law, where the one is charged with personal injury to the other, or the husband with forcible abduction followed by marriage, or perhaps in cases of treason. In such cases the husband or wife is a competent witness and is also a compellable witness, viz. can be ordered to give evidence (*R. v. Lapworth* (1931)).

**Competency of Witnesses.** The question whether a person is competent or fit to give evidence is one to be determined by the Court. The general rule is that all persons are competent to give evidence in all cases. A Court may decide that a witness is not competent to give evidence because of want of discretion, as in the case of persons incapable of understanding the nature of an oath or of giving a rational answer to a sensible question. For example, an idiot, a lunatic, a drunken person. A child of tender years, who does not understand the nature of an oath, may give evidence in offence cases if the Court is satisfied that

speaking the truth, but for a conviction there must be corroboration of such evidence (C. and Y.P. Act, 1933, s. 38). The husband or wife of the accused is not a competent witness for the prosecution, except in certain cases (see preceding paragraphs as to "Accused persons and their husbands or wives").

The Evidence Act, 1843, provides that no person shall be excluded from giving evidence on account of incapacity from crime or interest. Accordingly persons who have been convicted of crime, or who stand to gain or lose by the result of the trial, cannot be prevented on those grounds from giving evidence.

An accomplice, an accessory, or a principal In the offence, may give evidence.

**Witnesses out of Court.** At any period during a trial, the Court, at the request of either party, will usually order such witnesses of the opposite party as have not been examined to

leave the Court until they are called in to give evidence. (See s. 57, M.C. Act, 1952) This is done so that each witness may be examined out of the bearing of other witnesses who are to be examined after him, the object being that the evidence of each witness should not be influenced by what he has heard previous witnesses testify. Should a witness remain in Court after such order, the Court has no right to reject his evidence on this ground, but may punish him for contempt of Court.

**Interference with Witnesses.** It is a misdemeanour, being or prevent from attending Court any witness duly summoned or bound over by recognizance. It is also an offence to attempt in any way to keep witnesses away. Any interference with witnesses renders those concerned liable to committal for contempt of Court (see Chap. 21). A witness duly subpoenaed or summoned, or bound over by recognizance, is privileged from arrest on civil process whilst attending Court and for a reasonable time before and after the trial.

Where it becomes necessary to call as a witness a person under legal detention, application should be made to the Secretary of State for an order for him to be brought to the Court. See "Habeas Corpus," Chap. 5.

**Nature of Evidence.** Evidence may be given in the following manner :

- (1) A relation of a fact or facts by a witness. Such verbal evidence is termed *parol* or oral evidence.
- (2) A document being produced and the contents read to the Court. This is termed *documentary evidence*.
- (3) An article connected with the circumstances of the case being produced by a witness (who usually gives *parol* evidence accounting for it). This may be called *real evidence*.

The rule is that the best evidence the nature of the case will admit should be produced at the trial, as its absence will tell against the party neglecting to produce it.

The best evidence is termed *primary evidence*, or evidence at first hand, and such evidence is also called *direct* or *positive* evidence, meaning that the evidence of any fact alleged to have been seen, heard, or perceived by the senses must be the evidence of a person who says he saw, heard, felt, etc., that fact. *Primary* or *direct* evidence of a document or thing is the production of the original document or actual thing. If *primary* evidence of a fact is not available, then the next best evidence of that fact, which is termed *secondary evidence*, may be offered. Thus *secondary* evidence of a person, document, or thing would be the production of a deposition or statement, a copy of the document, or a model of the thing. But before *secondary* evidence of a fact may be given it will be necessary to prove that *primary* evidence is not

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available ; for example, if a party wishes to put in evidence a particular document he should produce the original document (primary evidence; but if he can prove that the original document is destroyed, lost, in possession of the opposite party, or

evidence of a true copy or of verbal evidence of its contents, but in the last case only if notice to produce it has been given to the party in whose possession it is or is supposed to be.

Parol or oral evidence given by a witness is admissible :

(1) When it is the best evidence (primary evidence) of the fact which it is sought to establish.

(2) As secondary evidence of the contents of a document which cannot be produced in Court.

Oral evidence of a fact should be confined to direct evidence of that fact as within the personal knowledge of the witness, who should only relate facts which happened in his presence or within reach of his senses. To this rule there are some exceptions, such as hearsay evidence and the opinion or belief of a witness, which are dealt with in later paragraphs.

A confession of guilt by the accused or an admission that part of the evidence for the prosecution is correct, made by the accused or by some authorised person on his behalf, may be proved by the direct evidence of some person who has heard the confession or admission. As such evidence amounts to proof of a statement made by a person not called as a witness in the case, it is hearsay evidence to a certain extent, but as it comes, or is alleged to come, from the defendant or with his authority, confessions and admissions are not here included as hearsay but are dealt with separately in Chap. 6.

Documentary evidence. Normally, a document produced before a Court has to be proved by a witness. A document 20 or more years old and produced from proper custody is admissible in evidence without further proof (Evidence Act, 1938, s. 4).

If an instrument (except a will) in any proceedings requires attestation, it may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive (Evidence Act, 1938, s. 3).

Evidence by Certificate. The Criminal Justice Act, 1948, B.41, provides as follows :

In any criminal proceedings a certificate by a constable or person having qualifications as prescribed (by rules made by the Secretary of State) certifying that the plan or drawing exhibited is correctly made to scale by him, of the place or object specified,

plan or drawing (s. 41 (1)).

In any proceedings for stealing railway or " transport " goods or receiving same or for stealing mail bags, postal packets, etc.,

or receiving same, a statutory declaration by any person that he sent, received or failed to receive any such articles, or that such articles when he sent or received them were in a particular state or condition, or that a vessel, vehicle or aircraft was at any time employed by the Post Office for transmission of postal packets, shall be admissible as evidence of the facts stated in the declara

1962, 4th Sched.), provides that in any proceedings for an offence

stating that a person specified in the certificate stated to the constable that a particular motor vehicle

- (a) was being driven or used by or belonged to, that person on a particular occasion; or
  - (b) on a particular occasion was used by or belonged to a firm in which that person also stated that he was at the time of the statement a partner; or
  - (c) on a particular occasion was used by or belonged to a corporation of which that person also stated that he was at the time of the statement a director, officer or employee,
- shall be admissible as evidence for the purpose of determining by whom the vehicle was being driven or used, or to whom it belonged on that occasion.

However such a certificate or declaration shall not be admissible in evidence unless oral evidence to the like effect would have been admissible and unless a copy has been served on the accused person not less than 7 days before the hearing or trial, or if the accused, not later than 3 days before the hearing or trial, serves notice on the prosecutor requiring the attendance at the trial

1948, s. 41 (5) and R.T. Act, 1960, s. 242 (3)). Evidence by Certificate of the use of the recorded delivery service.

A certificate from the clerk of a magistrates' court giving the court register or any extract from it shall be admissible in evidence in any legal proceedings (M.C. Rules, 1952, r. 56).

Evidence by certificate from the police can also be produced in some other cases. See " Summons," Chap. 5 and " Deserters and

Hearsay evidence is evidence given by a witness of what he has heard another person (not the accused) say. Such evidence is not admissible unless what was said had been said in the presence and hearing of the accused. Hearsay is not admitted in evidence because what the other person said was not upon oath, and because the accused had no opportunity of contradicting or cross-examining him. There are some exceptions to this rule, and hearsay evidence may be admissible in certain cases,

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(1) Dying declarations of persons whose death is the subject of the charge and whose declarations deal with the cause of death. (See "Dying Declaration," Chap. 6.)

(2) Rape, indecent assault on females and males and other similar offences. In such cases the fact that a complaint was made by the injured person to some other person as soon as reasonably possible after the act alleged and the particulars of the complaint may be given in evidence by that other person not as proof or corroboration of the act alleged, but as evidence of the conduct of the injured person and of the fact that the act was not consented to (*R. v. Lillyman* (1896); and *R. v. Osborne* (1905)). See also *R. v. Camelkri* (1922), and *R. v. Cummings* (1948).

(3) Written records or statements made by deceased persons in the regular course of duty or business. For example, police reports, entries in official note-books, etc.

(4) Statements made by a person as to his bodily or mental feelings, if such feelings are material in the case. Thus in a poisoning case, the deceased's words as to his symptoms and feelings before death would be very material as part of the transaction on which the charge is made.

(5) When the hearsay comes in as part of the *res gestae* or things done or incidents relevant to the matter in issue, viz. where it is one of the facts which actually make up the occurrence or transaction on which the charge is based. For example, in a case of manslaughter a statement made by the deceased immediately after he had been knocked down as to the cause of his injuries was admitted in evidence. However, it is extremely difficult to put in evidence hearsay as part of the matter which is the subject of the inquiry.

Opinion. The rule is that a witness is permitted to give direct or primary evidence, and is not allowed to testify as to matters which he cannot himself prove. However, in some cases a witness may be allowed to give his opinion or belief regarding a fact in issue; for instance:

(1) In matters of science or trade, an expert or skilled person may be asked the probable result or consequence of certain facts which have already been proved by evidence. For example, the opinion of a doctor as to whether a wound was or was not self-inflicted, or as to whether a man has died from the results of a wound or from natural causes. The opinion of an expert on the facts as proved is admissible in evidence.

(2) In a question of the genuineness of handwriting, the opinion of an expert is admissible.

(3) When there is a dispute as to the identity of a particular person or thing, the belief of a person in a position to judge will be admitted.



(4) As to the good character of the accused, that is, his general reputation.

(5) The opinion of experts as to the literary, artistic, scientific or other merits of an article which is alleged to be obscene but

may be admitted in any proceedings under the Obscene Publications Act, 1959.

Handwriting. The handwriting of a person may be proved by :-

- (1) The evidence of the writer himself.
- (2) A witness who actually saw the paper or signature written.
- (3) A witness who has a knowledge of the person's writing, by having seen him write on other occasions.
- (4) A witness who has seen in the ordinary course of business documents presumably written or signed by the person.
- (5) Comparison of the disputed writing with any writing proved to be genuine, made by witnesses acquainted with the handwriting or by skilled witnesses who are experts in hand writing.

The opinion of such a witness as in (3), (4) or (5), that the handwriting is or is not the handwriting of the person, is admissible.

Extent of Evidence. Any matter which may lawfully be deposited to and which may contribute, however slightly, to the clearing up of any question in dispute in a Court may be tendered in evidence, if accepted by the Court as admissible.

Evidence may be given of any fact arising in or out of the case (facts in issue), and of any fact relevant to any fact in issue (that is, related to or connected with such fact in issue), subject to the decision of the Court as to whether the evidence offered is too remote to be material in the case, as the introduction of matter having no bearing on the case would unduly prolong the trial and confuse the issue.

The general rule is that the evidence in a case should be confined to evidence proving or disproving the matter in dispute.

The following facts would be regarded as relevant in a prosecution :

- (1) Facts showing a motive for the offence, preparation for its commission, and conduct after its commission.
- (2) The conduct of the person against whom the offence was committed.
- (3) Facts connected with the facts of the case, as being explanatory or introductory, fixing times or places, showing the relation of the parties concerned, establishing identity of persons or things, proving the genuineness of documents, or leading up to other facts which may be relevant.

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The general rule given above would render inadmissible any evidence of things done or said by the accused in connection with other matters, which might have been similar to, but yet were not connected with the case under trial. Accordingly evidence that the accused had a bad character or had committed

cases the fact that the accused had said or done other things may assist the Court by throwing some light on the offence for which he is being tried. Accordingly evidence of other similar

cases :

(1) To prove intention or guilty knowledge on the part of the accused. In general a man is not held criminally responsible for his act unless he did it with some criminal intention. This intention or "malice" as a rule is displayed by the nature of the act committed, as the law presumes that a man intends the probable or natural results of his actions. Such proof of intention rebuts any suggestion or defence of accident or mistake. The question of intention or design is relevant in cases of murder, arson, rape, indecent exposure, forgery, coinage offences, conspiracy, embezzlement, false pretences, larceny, etc.

Under the Larceny Act, 1916, s. 43, special evidence of

(a) Evidence that other property, stolen within twelve months preceding the date of the offence, was found or had been in accused's possession.

(6) Evidence that within the five years preceding the date of the offence, accused was convicted of some offence involving fraud or dishonesty, but such fact may not be proved unless he has had seven days' notice in writing that

has been given that the property in respect of which he is being tried was found or has been in his possession.

Where a suspected person or reputed thief is charged with frequenting or loitering with intent to commit felony, evidence

given as part of the evidence against him as it is a fact in issue. (Vagrancy Act, 1824, s. 4, supplemented by Prevention of

See also "Loiterers and Suspected Persons," Chap. 28. For the special cases of a "persistent offender," see Chap. 28, and of a spy, see "Official Secrets Acts," Chap. 20.

(2) To prove system or course of conduct on the part of the accused, viz. that the act with which he is charged formed part of a number of similar acts in each of which he was concerned. This applies in arson, false pretences, poisoning and

(3) To prove character. An accused may call witnesses to prove that he has previously borne a good character (that *is*, a good reputation), and then the prosecution is at liberty to prove his previous convictions (*if any*), and to give evidence of bad character so as to rebut his evidence of good character.

(4)

might justify or excuse his act. For example, he might in sexual cases, produce evidence of the prosecutor's bad character because her character to some extent is in question, as she may have consented to the act.

Circumstantial evidence (see below) may be regarded also as an exception to the rule, as it does not directly or positively prove or disprove the matter in issue, although the facts it indirectly proves may be directly connected with the issue.

**Circumstantial evidence** means evidence, not of the actual fact to be proved, but of other facts from which that fact may be presumed with more or less certainty.

When there is a question of the past or present existence of a fact, direct evidence of that fact is the best evidence, but direct evidence of other relevant facts may enable the Court or

Circumstantial evidence may clearly establish guilt or innocence,

When on the proof of some fact the existence of another fact presumed that is, taken for granted until the contrary is proved. These presumptions of **fact** stand good until proved incorrect. For example, if a man was stabbed in a field and the accused was seen standing beside him with a bloodstained pitchfork in his hands, these facts would raise a presumption that the accused

are to be taken for granted. These directions are either conclusive, viz. they cannot be contradicted, or disputable, viz. they

**Conclusive presumptions** cannot be challenged ; for example, a child under eight is incapable of committing a crime ; a male under fourteen cannot commit rape.

accused person is presumed innocent ; every person is presumed sane until the contrary is proved ; every sane man is presumed to have intended the consequences of his own acts.

ing  
by direct or positive evidence certain facts from which the existence of the fact to be established may be reasonably inferred or presumed. Therefore, circumstantial evidence may be regarded

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Privilege is the right claimed by witnesses to decline to give evidence on certain matters. The general rule is that every person should testify as to what he knows, and it is for the Court to decide, subject to the practice as given below whether any particular evidence need not be given on the ground that it is privileged,

(1) Husband and wife. The Evidence Amendment Act,

1853, and the Criminal Evidence Act, 1898, s. 1, enact that a husband cannot be compelled to disclose any communication made to him by his wife during their marriage, and that like wise a wife need not disclose anything told her by her husband during marriage.

(2) A witness is not bound to answer any question which might, in the opinion of the Court, expose him to the risk of any punishment, penalty, or forfeiture, but this does not apply to an accused giving evidence on his own behalf. (See "Accused persons and their husbands or wives," in this chapter.)

(3) Lawyer and client. Communications between a lawyer and his client for the purpose of the case are confidential and

(4) Priest and confessions. In practice a clergyman may not be required to give evidence of a confession made to him in his capacity as a priest, but he cannot claim privilege as of right.

(5) Public policy. If it would be contrary to the public interest or injurious to the public service to disclose a particular fact, the witness may claim privilege on the ground of public policy. The Court will then not compel the witness to dis

if their disclosure would be contrary to the public interest, and the witness, whenever necessary, should claim privilege and ask the Court for a direction on the matter. A police officer should not disclose the name of an informant unless ordered by the Judge to do so and the disclosure is material or is necessary in the interest of the accused.

Communications between a doctor and his patient, no matter how confidential, are not privileged.

Leading questions are questions which are so framed as to suggest to the witness the answer desired or which contain the answer desired. Generally speaking, they are questions which can be answered by "Yes" or "No."

The rule is that leading questions on material points must not be asked by the side which produces the witness, but for convenience a party is allowed to put leading questions to his witness in the following cases :

(1) On all matters which are merely introductory and which do not form material part of the case.

(2) For the purpose of identifying persons or things.

(3) When a witness is called to contradict something to which another witness has sworn.

(4) Where a witness appears hostile to the party who has called him, provided the Court gives permission.

Where a witness's memory is defective or where the matter in question is complicated questions of such a nature as to lead the mind of the witness to the subject of the matter under inquiry may be allowed.

**Refreshing Memory.** A witness in the witness-box is allowed to refresh his memory by referring to any entry in a book or paper made by himself or by someone in his presence, or seen and examined by him shortly after the occurrence of the fact to which the entry relates, provided that he can swear to the fact from his recollection.

Such entry must be produced and shown to the opposing side if so required, and the witness may be questioned on it. A witness cannot use a copy of an entry to refresh his memory, unless the copy was made by himself or in his presence and he knew it to be correct.

**Hostile Witness.** When a witness shows himself adverse or opposed to the side which has called him he may be regarded as a "hostile witness." However, the fact that a witness's evidence is unfavourable to his side does not necessarily render him a hostile witness. It is for the Court to decide whether a witness should be treated as a "hostile witness."

If the Court gives permission, the side that has called a hostile witness may :

(1) Put leading questions to him ;

(2) Cross-examine him ;

(3) Contradict him by other evidence ;

(4) Prove that he has made at other times a statement inconsistent with his present testimony, provided that before such proof is given, the circumstances of this previous statement must be mentioned to the witness and he must be asked whether he has or has not made such statement (Criminal Procedure Act, 1865, s. 3).

**Unwilling Witness.** If a person attending or brought before a magistrates' court refuses without just excuse to be sworn or give evidence or to produce any document or thing, the Court may commit him in custody for up to 7 days or until he sooner gives evidence or produce the document or thing (M.C. Act, 1952, s. 77).

The Onus or Burden of Proof of any fact rests on the person who alleges it, therefore the task of proving an alleged offence rests on the prosecution, who have to satisfy the Court (and jury if there is one) beyond all reasonable doubt that the evidence

*Director of Public Prosecutions* (1935)). However, when the necessary facts are proved, the burden of proof is shifted to the accused, who has to prove his innocence or be convicted. In some cases Acts of Parliament place the burden of proof on the accused; for example, the person found in possession of coining implements or counterfeit coins must prove a lawful excuse, and in a customs case the accused has to prove that the duties have been paid or the goods were lawfully imported.

A Court should take judicial notice that is, admit in evidence, without proof certain facts of general knowledge, such as the laws of the country, the extent of the realm, the course of nature, etc.

In a criminal case all facts alleged should be proved and the accused's admissions will not enable the prosecution to dispense with proof though his confession may be proved against him.

**Examination-in-chief.** This is the examination of a witness by the party who produces him, and it is also called his direct **examination**, of which the two main rules are :

(1) The witness should be allowed to relate his story, and any questions asked should relate solely to the matter immediately in issue. No question should be asked if the probable answer would not have a tendency to prove the offence or the defence or other matter being tried. Questions must be relevant that is, they should be such as are likely to elicit evidence of facts on which the Court may decide the guilt or innocence of the defendant.

(2) Leading questions on material points must not be asked. The few exceptions to this rule have been given above.

If an Irrelevant or leading question is put, the opposing side may at once object, and if necessary appeal to the Court.

**Cross-examination.** When the direct examination has finished the witness may be questioned or cross-examined by the other side. If the witness has told the whole truth, cross-examination of his evidence will render his story stronger and will impress the Court still more. In such a case cross-examination may be confined to questions attacking his credibility, by questioning his means of knowledge, his impartiality, or his character.

If the witness is not telling the truth, then he may be questioned as to his facts, as well as to his credibility, and the truth can later be proved by other witnesses.

In cross-examination a witness may be asked leading questions. In fact great latitude is allowed in cross-examination, though the rule is that questions should be relevant to the issue or calculated to bring out the witness's title to credit (or discredit).

Questions irrelevant to the issue may be put for the purpose of challenging his character or testing his credit, but the answers

of the witness to such questions must be taken and cannot be contradicted by independent evidence except in the case where he denies that he has been previously convicted, as if so the conviction may be proved by production of certificate of conviction with proof of identity (Criminal Procedure Act, 1865 s. 6; Prevention of Crimes Act, 1871, s. 18).

If the questions put relate to relevant facts, the answers of the witness may be contradicted by independent evidence.

A witness can claim the right to refuse to answer certain questions, questions where the answers might expose him to any criminal charge, etc., as given more fully under the heading of "Privilege." He can appeal to the Court, which will decide whether he ought or ought not to answer such questions.

A witness can be cross-examined as to previous statements made by him in writing or reduced into writing relative to the case at trial, without such writing being shown to him.

If a witness, on cross-examination as to a former statement (written or verbal) made by him relative to the case and inconsistent with his present testimony, does not admit he made that statement, proof may be given that he did in fact make it, provided that he is first given the circumstances of the disputed statement and asked whether or not he did make it (Criminal Procedure Act, 1865, *a.* 4).

Accused persons giving evidence on their own behalf may be cross-examined subject to the restrictions given under "Accused persons and their husbands or wives."

Re-examination. After a witness has been cross-examined the party who called him has a right to re-examine him upon any new facts which may have arisen out of the cross-examination, and may also ask questions necessary in order to explain any part of his cross-examination. He has no right to go further than this, and may not introduce matter new in itself and not necessary to explain any part of the cross-examination.

Recalling a Witness. The Court may at any time recall a witness and ask him any questions. If something has been left out in the direct examination and cannot be brought in in re-examination because it was not referred to in the cross-examination, it is usual to ask the Court to make the inquiry of the witness, and the request is usually granted. If a witness for the prosecution is thus recalled, the accused is allowed to cross-examine him on the new evidence given.

When the magistrates begin to inquire into an indictable offence as examining justices and later proceed to deal summarily with the accused then, unless the accused pleads guilty, they shall recall for cross-examination any witnesses who have given evidence except any not required by the accused or prosecutor (M.C. Rules, 1952, r. 21).

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**Rebutting Evidence.** When the defence has produced evidence introducing new matter which the prosecution has not dealt with, the Court in its discretion may allow the prosecution to give evidence in reply to rebut or contradict it. When such rebutting evidence is given the defence is entitled to comment on it.

Thus evidence may be called to rebut or contradict an alibi. The Latin word "alibi" means "elsewhere," and an alibi is an effort to prove that the accused was elsewhere at the time of the alleged offence, and therefore could not have committed it. The prosecution also may call evidence to rebut evidence of good

**Character after Conviction.** When an accused person has been found guilty it is customary for the Court to inquire as to his previous character. It is the duty of the police to exercise the

accused person. Such evidence of character will consist of the record of any previous convictions (see Chap. 2), the result of any inquiries that may have been made, and what the officer testifying can depose to of his own personal knowledge. Nothing should be omitted that is in favour of the prisoner, and nothing should be laid to his prejudice which the officer is not able to substantiate.

**Previous Convictions.** To prove a previous conviction strictly

referred to in such documentary evidence or the evidence of finger prints as mentioned under "Convicted Persons" in Chapter 2.

any purpose before the conviction of an accused person unless the accused admits it. After conviction, any previous convictions as given in the accused's official record may be mentioned as part of his antecedents and character (*R. v. Van Pelt* (1943)).

The general rule is that information as to previous convictions, etc., should not be told to the Court until after conviction but

(1) If an adult (17 or over) is tried summarily for an indictable to his character and antecedents should then be given to the Court, including previous convictions if any. If the Court con-

can inflict, the Court can commit the accused in custody to Quarter Sessions for sentence (M.C. Act, 1952, s. 29). If a second summary conviction would entail an increased penalty the first one should be properly proved. See "Convicted Persons," Chap. 2. See s. 3, M.C. Act, 1957, as to proof of a previous summary conviction when a magistrates' court convicts a person of a summary offence, and M.C. Rules 1957 as to notice of it and service of summons.



(2) When considering bail the Court may consider any previous convictions of the accused (*R. v. Fletcher* (1949)).

ment as to the antecedent history of accused and convicted persons to the following effect:

1. Details of previous convictions should, on request be supplied by the police to the defending lawyer so that the defence may be properly conducted as regards accused's character.

2.

the prison, The police need not supply them to the Court before conviction but should give to the Governor any in

3. A police officer, for evidence, should prepare a statement containing a list of previous convictions with particulars of

convicted, the police officer should be sworn and the statement given to the Court and to the defence.

If it is to be said that the accused associates with bad characters the officer saying so must be able to speak of this from his own knowledge.

The Perfect Witness. He should relate in ordinary language the story he can tell of his own knowledge as to what he has seen, heard, etc. He should confine himself to facts, avoiding inferences and opinions or beliefs. He should tell his story in the natural

from memory, expressing himself clearly and accurately. He should not produce his notebook as a matter of course and read

that  
he understands it, and give an intelligent and proper answer to the best of his ability. He should only answer the questions

frankly.  
He should never lose his temper under cross-examination questions.

He should not show partisanship or prejudice, and ought to give his evidence fairly and impartially, giving all the evidence in favour of the accused in addition to the evidence against him. If he does not know something asked he should say so. He is sworn to tell the whole truth, and nothing but the truth.

## PART n . OFFENCES AGAINST PERSONS

### Chapter VIII

#### ASSAULT

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Assault. An assault is an attempt or offer by force or violence to do bodily injury to another. It is a misdemeanour at common

To constitute an assault it is not necessary that the other party should be touched or receive any injury. Some act accompanied by such circumstances as indicate an intention of using actual violence against the person of another will amount to an assault, provided that the attacker has the means of carrying out his intention.

A battery is the actual application of unlawful force to another, and any hostile touching, no matter how slight, is a battery.

Every battery includes an assault, as an assault becomes a battery when the party is touched or struck.

In practice the word " assault " is used to cover both the assault and the battery.

It is not necessary that the injury should be effected directly by the hand of the assailant, as, for example, there may be an assault by setting a dog at another person.

The intention is material, as an accidental injury does not amount to an " assault " in law. Where the act is done with the consent of the other party, it is not an " assault " unless such consent has been obtained through fraud or is the result of ignorance, or unless the act is attended with a breach of the peace or is in some way injurious to the public or unless there was such a degree of violence that bodily harm is a probable consequence. As regards consent, see *R. v. Donovan* (1934).

Thus a prize fight or a duel is unlawful, even though there is consent on both sides, as amounting to a breach of the peace. A challenge to fight or to fight a duel is also unlawful, being a

misdeemeanour, as likely to cause a breach of the peace. However a prize fight properly conducted under rules indicating that the object is to win by skill, and not through exhaustion or injuries caused, is not illegal.

may administer reasonable and moderate chastisement to a child or young person (Children and Young Persons Act, 1933,s.1).

In some cases an assault may be justified at law, as in the case of a constable arresting his prisoner or of a person using necessary violence in self-defence or in defence of his wife (husband), parents, property, etc. However, in such cases the force used must *be*

Insulting or provocative words do not make an assault and do not justify an assault.

Statutory Assaults. Assaults can be dealt with summarily **or** on indictment, according to their nature, as follows :

S. 42: To unlawfully assault or beat any other person.

is made by the injured party or by someone on his behalf  
Penalty, £5 fine or two months imprisonment or if dealt with on indictment imprisonment up to one year.

S. 43: An assault or battery of an aggravated nature upon any boy whose age does not exceed fourteen years or upon -

" Aggravated " here means made worse in respect of violence, but not in respect of indecency (*K. v. Baker* (1883)).

Tf a person charged under ss. 42 or 43 is convicted or acquitted -

The consent of a person under sixteen years of age to an indecent assault affords no defence to the charge as such a person cannot in law consent to it. See Sexual Offences Act, 1956, s. 15.

summarily provided the accused consents to be so dealt with (Magistrates' Courts Act, 1952, s. 19 and First Sched. as

S. 47: To assault any person, thereby occasioning actual bodily harm. M.

upon any person with or without any instrument. M.

92      PART    II.   OFFENCES AGAINST PERSONS

These two misdemeanour! (ss. 20 and 47) can be dealt with summarily if the accused consents (M.C. Act, 1952, s. 19 and 3. 38. To assault any person with intent to commit felony.

M.

In many other cases statutes provide penalties for assaults with intent to commit various offences. These assaults are

right given to a defendant to claim trial by jury where the assault is punishable by more than 3 months imprisonment does not apply

Offences against the Person Act, 1861, s. 46, provides that if a Summary Court finds that an assault was accompanied by an attempt to commit felony, or considers that the case should be dealt with on indictment, the Court should abstain from any adjudication thereon. It also declares that the Justices are not authorised to hear and determine any assault arising out of any question of the title to land or of any bankruptcy, insolvency, or

Assaulting, Obstructing or Resisting  
the Police :

shall be guilty of an offence against this Act. Penalty, £20 fine or six months imprisonment, which may be increased to nine months if the accused has been convicted of a similar assault within the preceding two years.

to assault or resist, or encourage any other person to assault or

after commission of the offence. Penalty, £20 fine.

The Municipal Corporations Act, 1882, s. 195, the Town Police Clauses Act, 1847, s. 20 (if applied by local Act), and the

liis

in the due execution of his duty or any person acting in aid of such officer, or to assault any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence.

Prevention of Crimes Amendment Act, 1885, s. 2. It is a summary offence to resist or wilfully obstruct any constable or police officer when in the execution of his duty. (See *Hinchliffe v. Sheldon* (1955)). Penalty. £5 fine.

An attempted rescue of a prisoner may be dealt with summarily as assaulting, obstructing or resisting the police.

Powers of Arrest. A constable may arrest when an assault is

committed in his presence. However, he should exercise this power with discretion, the main points to consider being the seriousness of any injury sustained and the likelihood of a repetition of the offence. In ordinary assaults the parties as

arrest a person who, in his view, threatens to commit an assault, except where the threat appears to be an empty one and there has been no breach of the peace.

A constable should arrest in cases where dangerous injuries

not be separated, or where the peace has been disturbed and the removal of the offender is necessary for its preservation.

If an interval has elapsed after the commission of a common assault the constable should not arrest, except in the case of continued pursuit to arrest the person who has committed the assault.

Wounding and other Serious Assaults. The Offences against the Person Act, 1861, provides severe punishment for these serious attacks on the person, which in some cases just fall short of homicide.

bodily harm to any person or shooting at or attempting to discharge any loaded arms at any person, with intent to maim, disfigure, disable or do him grievous bodily harm, or with intent to prevent or resist the lawful apprehension of any person. F.

To constitute a "wounding" the whole skin must be broken. To "maim" is to injure any part of the body so as to render the person less capable of fighting. Grievous bodily harm means really serious bodily harm.

harm upon any person, either with or without any weapon or instrument. M. This can be dealt with summarily with accused's consent (M.C. Act, 1952, s. 19 and First Sched.).

Choking. S. 21: Attempting to choke, suffocate, or strangle any person, or attempting to render any person insensible or incapable of resistance by any means calculated to choke, suffocate or strangle, with intent to commit an indictable offence. F. This crime is known as garrotting, and is usually committed by robbers who choke their victims into unconsciousness so as to take their property.

Drugging. S. 22: Unlawfully administering or attempting to cause to be taken, any chloroform or other stupefying drug or thing with intent to enable the committing of an indictable offence. F. See also "Procurement," Chap. 10.

Poisoning. S. 23: Maliciously administering any poison or other destructive or noxious thing *so* as thereby to endanger human life or cause grievous bodily harm. F.

or noxious thing with intent to injure, aggrieve or annoy. M.

**Burning, etc.** S. 29. Maliciously and with intent to burn, maim, disfigure, disable or cause, grievous bodily harm, sending, placing, throwing or otherwise applying any corrosive fluid or any destructive or explosive substance, whether any bodily harm

the unlawful use of explosives, see " Explosives," Chap. 33.

**Threats and Menaces.** As it is possible that a person who has been threatened in any way may take such action as might lead to a breach of the peace, any person who makes any threats either verbally or by action or in writing is liable to be bound over to keep the peace and (or) be of good behaviour See " Breach of the Peace and Sureties," Chap. 22. Threatening letters and certain threats and menaces affecting person, property or reputation are dealt with by statute as follows : *Offences against the Person Act*, 1861, s. 16. It is a felony

to be received knowing the contents thereof, any letter or writing threatening to kill or murder any person.

*Malicious Damage Act*, 1861, s. 50. It is a felony to send deliver or utter or directly or indirectly cause to be received knowing the contents thereof any letter or writing threatening to burn or destroy any house, barn or other building, or any rick or stack of hay, grain or straw or other agricultural produce, or any agricultural produce in or under any building, or any

*Larceny Act*, 1916, s.

29. It is a felony :

(1) To utter, knowing the contents thereof, any letter or writing demanding of any person with menaces and without any reasonable or probable cause, any property or valuable thing. " Menace " includes a threat of violence and also a threat of action unpleasant or harmful to the person and the prosecution should prove the absence of reasonable cause for

*Association* (1937)).

(2) To utter, knowing the contents thereof, any letter or writing accusing or threatening to accuse any other person (living or dead) of any crime punishable with death or seven years or more imprisonment, or of any assault with intent to commit rape or of any attempt to commit rape or of any attempt to induce any person to commit or permit the abominable crime of buggery, with intent to extort or gain any property or valuable thing from any person. (This is known as " Blackmail.")

(3) To accuse or threaten to accuse any person (living or dead) of any such crime, with intent to extort or gain any property or valuable thing from any person. (This is also

(4)

any valuable security, or to attach any signature or seal to any document so as to render it a valuable security, when done with intent to defraud or injure any person and by any unlawful violence or restraint to the person of another or by accusing or threatening to accuse any person (living or dead) of any such crime or of any felony. (This too is "Blackmail.") S. 31: It is a misdemeanour when done with intent either to extort any valuable thing from any person or to induce any person to confer or procure any post of profit or trust, for any person :

(1) To publish or threaten to publish any libel upon any other person living or dead, or

(2) to threaten to publish, or to propose to abstain from publishing, or to offer to prevent the publishing of any matter or thing touching any other person living or dead. (This is also "Blackmail.") See "Libel," Chap. 23.

These blackmailing offences amount to attempts to extort money or property by threats to make public something seriously detrimental to the reputation of any person living or dead. In such cases the Court may request that the names of the persons concerned should not be made public.

S. 30: It is a felony to demand with menaces or by force of any person, anything capable of being stolen, with intent to steal the same.

S. 13: It is a felony for any person to steal in any dwelling-house any chattel, property or valuable security and by any menace or threat to put any person in such dwelling-house in bodily fear.

Sexual Offences Act, 1956, s. 2. It is an "offence" by threats or intimidation to procure or attempt to procure any woman or girl to have any unlawful sexual intercourse in any part of the world. See also "Procuration," Chap. 10.

For threats, etc., in labour disputes, see "Intimidation,"

**Chapter IX****HOMICIDE****Content\***

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Homicide. This is the killing of a human being by a human

Every case of "causing death" should be regarded as a possible murder (which is a felony at common law) unless there is evidence to show that it is not murder.

In all cases of homicide the prosecution should call as witnesses all persons present at the killing to give a full account of the circumstances. If there is evidence to indicate murder the accused, if he can, should produce evidence to prove that his action was justifiable or excusable or that it did not amount to felony.

Homicide may be justifiable that is, not deserving of any blame under the following circumstances :

(1) Where a criminal is executed in accordance with his sentence.

(2) Where an officer of the law whilst performing his duty has of necessity to kill a person who is resisting or preventing him in the execution of his duty.

(3) Where it is committed to prevent a forcible and atrocious crime, such as murder or rape.

Homicide also may be excusable that is, excused by law but not quite free from blame as in the following cases :

(1) Where a person kills another by misadventure or accident, without any intention of harm, whilst doing a lawful act in a proper manner.

(2) from attack, unavoidably in the course of the struggle kills another.

If homicide cannot be justified or excused it is criminal or felonious. There\* are four forms of felonious homicide, viz. :

(1) Murder, which is defined as where a person of sound memory and discretion unlawfully killeth any reasonable



creature in being with malice aforethought either expreu or

(2) Manslaughter, which is denned as the unlawful and felonious lulling of another without any malice either express or implied.

(3) Infanticide, which is the felony committed by a woman when by any wilful act or omission she causes the death of her newly born child, her mind being then unbalanced.

See

" Infanticide " and " Child Destruction," Chap. 12.

Murder. Only persons of sound memory and discretion are liable to conviction for murder ; children under eight, idiots, imbeciles and lunatics are not so liable. A person who is abnormal, sulk-ring from diminished responsibility, shall not be convicted of murder but may be convicted of manslaughter (Homicide Act, 1957, s. 2). The killing must have been unlawful and without

negligence. The person killed must have been a reasonable creature in being, so to constitute infanticide the child should have been born alive. See also " Abortion," " Child Destruction," and " Infanticide," Chap. 12.

The killing must have been with malice aforethought that is, tome evil intent beforehand to do harm without just cause or excuse.

another. Such clear intent may be proved by the circumstances of the lulling, by previous threats, by lying in wait, etc., etc.

attending the homicide, for instance when death occurs from violence done when committing a felony or violence. See " Malice," Chap. 1.

In a prosecution for murder, in addition to proving the homicide,it is necessary to prove that death resulted from a voluntary act on the part of the accused and also malice either express or implied on the part of the accused. The accused is entitled to show by

tion must prove the prisoner's guilt beyond reasonable doubt (*Woolntington v. Director of Public Prosecutions* (1935)),

The deceased must have died of the injury given him by the accused, and within a year and a day after he had received it. If he died after that time the law presumes his death occurred from some other cause.

Circumstantial evidence may be sufficient to establish the guilt of the killer, but it must be very strong to justify «on- viction in cases where the body of the killed person has not bean found. See " Circumstantial Evidence," Chap. 7.

Manslaughter. The absence of malice will reduce murder to manslaughter. Manslaughter may be voluntary that 1», when

a person in a sudden fight kills another or it may be involuntary that is, where a person who is doing some non-felonious

culpably neglecting his duty, accidentally causes the death of another. Also the existence of provocation may reduce murder to manslaughter, but the provocation must have been great and such as would deprive a reasonable person of his self-control.

mination of the jury (Homicide Act, 1957, s. 3).

If a person, by his neglect or default, unintentionally causes the death of another, he may be convicted of manslaughter. It will be no defence to plead that the person killed contributed

sick, aged, or lunatic persons) which results in death, may be murder if premeditated, or manslaughter if there has been gross and culpable negligence.

A person can be convicted of manslaughter arising out of the driving of a motor vehicle. Proof of a very high degree of negli

motor vehicles on the road. (*Andrews v. Director of Public Prosecutions*, (1937)).

Manslaughter in connection with the driving of a motor vehicle can be dealt with as reckless or dangerous driving. See "Danger

Suicide. Suicide is where a person kills himself, and a "Suicide pact" means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact is to be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

It is manslaughter, and not murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other being killed by a third person.

another, killed the other or was a party to his being killed, it is a defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other. (Homicide Act, 1957, s. 4.)

Under the Suicide Act 1961, suicide ceases to be a crime (s. 1) therefore the attempt to commit suicide is no longer a crime, but suicide.

another, or an attempt by another to commit suicide, commits a serious offence (s. 2 (1)).

If on the trial for murder or manslaughter it is proved that the person in question, he may be found guilty of that offence (s. 2 (2)).

This offence is not triable at Quarter Sessions. Proceedings against a victim who is a child or young person it will be lawful, before the D.P.P. has been consulted, to exercise the powers conferred by ss. 13 and 40 of the C. and Y.P. Act, 1933, to arrest the offender and to remove the victim to a place of safety. (S. 2 (4)).

### **Legal Consequences of Homicide and kindred Offences.**

Homicide Act, 1957:

- S. 5: The following shall be capital murders:
- (a) Murder done in the furtherance or course of theft.
  - (b) Murder by shooting or causing an explosion.
  - (c) Murder in resisting lawful arrest, or in assisting an escape or rescue from legal custody.
  - (d) Murder of a police officer or his assistant acting in the execution of his duty.
  - (e) Murder of a prison officer or his assistant acting in the execution of his duty.

The punishment for capital murder is death (except where the offender is a pregnant woman or a person under 18 years of age).

S. 6: A person convicted of 2 or more murders on different occasions in Great Britain is liable to the death penalty.

S. 7: Death penalty for murder is enforceable only under ss. 5 and 6 of this Act.

S. 9: Where a court is precluded from passing sentence of death for murder, the sentence shall be one of imprisonment for life.

Offences against the Person Act, 1861 :

S. 1: Murder is a felony. Persons under eighteen when they commit the crime shall not be sentenced to death or life imprisonment but shall be sentenced to be detained during Her Majesty's pleasure (C. and Y.P. Act, 1933, s. 53, as amended by s. 9, Homicide Act, 1957).

Imprisonment for life instead of sentence of death on conviction of murder shall be pronounced in the case of an expectant mother (Sentence of Death (Expectant Mothers) Act, 1931).

S. 5: Manslaughter is a felony punishable by imprisonment for life, or by fine. Infanticide is punishable as manslaughter (Infanticide Act, 1938). Child destruction (Chap. 12) is punishable by imprisonment for life.

S. 7: To kill another by misfortune or in defending oneself or in any manner without felony is not punishable.

S. 9: Murder or manslaughter by a British subject abroad may be dealt with in the county or place in this country where he is in custody.

S. 4: Conspiracy to murder any person anywhere, or  
 misdemeanour punishable by imprisonment for ten year\*.

S. 11: Administering or causing to be administered to any person any poison or other destructive thing or wounding or causing grievous bodily harm to any person, with intent to commit murder, is felony.

S. 14: Attempting to administer or cause to be administered any poison or other destructive thing, or shooting at any person, or attempting to discharge any loaded arms at any person, or, attempting to drown, suffocate or strangle any person, with intent to commit murder, is felony.

S. 12: Destroying or damaging by explosives any building with intent to commit murder is felony. (Having or making explosives with intent to commit any of these felonies is a misdemeanour (s. 64).)

S. 13: Setting fire to, casting away or destroying any ship or vessel with intent to commit murder is felony.

S. 15: Any attempt to commit murder, by any means other than those specified, is felony.

S. 16: Sending, uttering, etc., a letter or writing threatening to murder any person is felony. See " Threats and Menaces," Chap. 8.

S. 67 gives the heavy penalties to which accessories to any of these felonies are liable.

AH these serious offences must be tried at Assizes.

Persons under 17 cannot be dealt with by a summary court for homicide, they must be remanded for trial by a Higher Court (M.C. Act, 1952, ss. 20, 21).

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respect to every offence punishable by death to the Director of Public Prosecutions, therefore every case of murder must be reported to the Director, and also every offence of attempted

Search warrant, 1861 Act. S. 64 of the Offences against the

possession or make any gunpowder, explosive substance or any dangerous or noxious thing or any machine, engine, instrument  
 pose  
 of enabling any other person to commit, any of the felonies in this Act mentioned, and s. 65 empowers a Justice, on reasonable cause on oath, to issue a warrant to search any house or place where the same is suspected to be for such purpose as hereinbefore mentioned.